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1st Session

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REPORT
102-167

COMPREHENSIVE DEPOSIT INSURANCE REFORM AND TAXPAYER PROTECTION ACT OF 1991

REPORT

OF THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 543

together with

ADDITIONAL VIEWS

OCTOBER 1 (legislative day, SEPTEMBER 19), 1991.—Ordered to be printed

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COMPREHENSIVE DEPOSIT INSURANCE REFORM AND TAXPAYER PROTECTION ACT OF 1991

OCTOBER 1 (legislative day, SEPTEMBER 19), 1991.—Ordered to be printed

Mr. RIEGLE, from the Committee on Banking, Housing, and Urban Affairs, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 543]

INTRODUCTION

On August 2, 1991, the Senate Committee on Banking, Housing, and Urban Affairs marked up and ordered to be reported a bill, the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991, to reform Federal deposit insurance, protect the deposit insurance funds, and improve supervision and regulation of and disclosure relating to federally insured depository institutions.

The Committee vote was 12 ayes and 9 nays to adopt S. 543 as amended and report it to the Senate for consideration as promptly as circumstances permit. Six Democrats and six Republicans voted in favor of adopting and reporting the bill. Voting to report the bill were Chairman Riegle and Senators Cranston, Dodd, Dixon, Sanford, Shelby, Garn, Bond, Mack, Domenici, Kassebaum and Chafee. Opposed were Senators Sarbanes, Sasser, Graham, Wirth, Kerry, Bryan, D'Amato, Gramm, and Roth.

TITLE-BY-TITLE SUMMARY OF MAJOR PROVISIONS

TITLE I—BANK INSURANCE FUND RECAPITALIZATION

Title I addresses an issue of immediate concern to this country's taxpayers: the solvency of the Bank Insurance Fund. The bank failures of recent years—unprecedented since the Great Depression—have drained the Bank Insurance Fund nearly dry. As a percentage of insured deposits, the Bank Insurance Fund now stands at its lowest level in history. The Federal Deposit Insurance Corporation ("FDIC"), the General Accounting Office, the Congressional Budget Office, and the Office of Management and Budget all agree that the fund will be empty by the end of 1991.

Title I sets forth a concrete program for rebuilding the Bank Insurance Fund so that America's taxpayers will not have to pay for the bank failures that are expected to occur in the early 1990's. Title I includes measures intended both to meet the fund's immediate liquidity needs and to rebuild the fund so it can once again be a source of protection to taxpayers.

To meet the fund's immediate liquidity needs, the bill provides the Fund two new lines of credit similar to those requested by the Administration. First, title I permits the fund to borrow up to an additional $25 billion from the Treasury to protect depositors from loss. Title I requires the banking industry to repay this loan through assessments over a period of years. The Treasury line of credit will terminate in 15 years or when the Fund regains its designated reserve ratio of 1.25 percent of insured deposits. Second, to cover working capital needs, title I also allows the fund to borrow up to $45 billion from the Federal Financing Bank. These working capital borrowings will be repaid by selling assets of failed institutions.

Title I also rebuilds the Bank Insurance Fund to its designated reserve ratio of 1.25 percent of insured deposits. Specifically, title I requires the FDIC to adopt a schedule for recapitalizing the Fund to the 1.25 percent level within a period not to exceed 15 years. If the FDIC ultimately needs a longer period, title I requires that it return to Congress for an extension and sets forth procedures for expedited Congressional consideration of such a request. The GAO will review annually the adequacy of the recapitalization schedule and the FDIC's compliance with it.

Title I also authorizes the Treasury Department to guarantee repayment of a private loan to the State of Rhode Island for the purpose of repaying depositors at certain failed Rhode Island banks and credit unions that were not FDIC-insured. In order to utilize the guarantee, Rhode Island must pledge assets of the failed institutions equal to 2.5 times the principal amount borrowed. In addition, the guarantee is secured by the surplus from Rhode Island's special sales tax. The Treasury will collect from Rhode Island an annual guarantee fee of 0.5 percent of the outstanding principal.

TITLE II—DEPOSIT INSURANCE REFORM

The Committee believes that regulatory policies of recent years have increased, rather than decreased, the deposit insurance system's losses. Regulators have kept failing banks open too long and have routinely protected uninsured depositors. In such circumstances it would be irresponsible to loan Treasury funds to the FDIC without changing the way banks are regulated. Title II accordingly includes measures to reform the bank regulatory and deposit insurance system. These reforms are designed to minimize the cost of bank failures and to eliminate abuses of deposit insurance coverage, while protecting average depositors.

Prompt Corrective Action

The cornerstone of title II is a new regulatory system of "prompt corrective action." This will require bank regulators to act promptly to prevent troubled banks from becoming taxpayer liabilities. The purpose of the prompt corrective action mechanism is to encourage regulators to resolve the problems of troubled institutions while the institutions can still absorb their own losses, protecting the deposit insurance system and the taxpayers.

Title II makes a bank's level of capitalization the trigger for regulatory action. As a bank's capital declines, the bill provides for increasingly stringent corrective measures designed to restore the bank's financial health. Regulators must take specific actions when a bank becomes "undercapitalized," "significantly undercapitalized," and "critically undercapitalized."

When an institution becomes undercapitalized, title II requires that it submit a detailed plan for rebuilding its capital position without appreciably increasing its risks. Title II also restricts undercapitalized institutions' growth and dividends.

If an undercapitalized institution deteriorates to the point that it becomes significantly undercapitalized, however, or if the institution fails to submit a capital restoration plan, title II generally requires its regulators to take the following steps:

Require the institution to recapitalize by issuing stock or subordinated debt.

Restrict transactions with affiliated institutions.

Restrict the interest rates the institution pays on deposits.

Each of these steps is mandatory unless the regulator determines it would not further the purpose of resolving the institution's problems with no loss or minimal loss to the insurance fund.

Title II also makes additional steps available to regulators in dealing with a significantly undercapitalized institution. The regulators may restrict any activities that pose excessive risk to the insurance fund; replace the institution's directors or senior executive officers; replace the institution's independent auditor; and require divestiture of the institution or a troubled affiliate posing a significant risk to the institution. The institution's ability to give bonuses and pay raises to its senior executives is restricted.

Should the institution deteriorate to the point of being critically undercapitalized, title II requires its regulators to appoint a conservator or receiver for it or take some other action that would better protect the deposit insurance system. Generally, title II mandates receivership for any institution that has been critically undercapitalized for one year, unless the institution has significant operating earnings and its capital level is at least 80 percent of the critical capital level.

Too Big to Fail

Title II also restricts application of the FDIC's "too big to fail" policy. The Committee is concerned that this policy has been a cause of unnecessary losses to the deposit insurance system. In addition, the Committee believes that "too big to fail" operates inequitably: while the FDIC protected foreign depositors of the National Bank of Washington when that institution failed, it turned its back on uninsured depositors at Freedom National Bank in Harlem. To end "too big to fail," title II requires that in resolving failed institutions the FDIC must in all cases employ the strategy resulting in the least possible cost to the insurance fund. Restricting "too big to fail" will greatly reduce the strains on the insurance fund.

For the extraordinary cases where the failure of an institution would jeopardize the economy or the financial system, the bill provides a "systemic risk" exception. To reduce the chance that the failure of any one bank will threaten the entire system, title II requires the Federal Reserve Board to devise limits on the amount a bank may lend to other banks.

Discount Window

Title II also restricts the Federal Reserve's ability to prop up failing institutions through discount window advances. These discount window advances have had the effect of paying off uninsured depositors and in some circumstances increasing resolution costs to the FDIC. Title II provides that a Federal Reserve bank generally may not have advances outstanding to an undercapitalized institution for more than 60 days in any 120-day period. The Federal Reserve will also be liable for a portion of any excess losses incurred by the FDIC with respect to an institution that receives Federal Reserve bank advances after becoming critically undercapitalized.

Risk-Based Premiums

In order to increase market discipline on the banking system, the bill instructs the FDIC to develop and institute a system of risk-based deposit insurance premiums. This provision will encourage banks to confine themselves to safe and sound activities. The bill includes a pilot risk-based premium program based on private reinsurance for the 50 largest banks and gives the FDIC discretion to implement such a system based on that pilot program.

Scope of Insurance

With regard to the scope of deposit insurance coverage, title II generally eliminates insurance coverage of bank investment contracts, reducing the exposure of the insurance fund. The bill also restricts insurance coverage of brokered deposits to the healthiest banks. The bill does not change the current coverage of multiple accounts at a single institution.

Cross-Guarantee

As a further protection, title II extends current cross-guarantee liability of depository institutions under common control to any company that controls an insured institution. The aggregate liability of all controlling companies of an insured depository institution is limited to 5 percent of the institution's total assets. No affiliate other than a controlling company or another depository institution under common control will be liable under the cross-guarantee.

Insider Abuse

The failure of Madison National Bank case illustrates the risk to the deposit insurance system posed by loans to insiders. To prevent self-dealing from causing losses to the FDIC, title II increases safeguards against insider abuse. Title II applies certain loans to one borrower restrictions to directors as well as officers and principal shareholders, limits a depository institution's aggregate extensions of credit to insiders, prohibits insiders form accepting unauthorized extensions of credit, limits extensions of credit to executive officers by savings associations and state nonmember banks, and prevents savings associations from making preferential extensions of credit through correspondent institutions.

Restrictions on Risky Activities

States currently have an incentive to allow the depository institutions they charter to gamble with Federal deposit insurance. State- chartered institutions engaging in risky activities have already cost the taxpayers billions of dollars. Thrifts chartered by just two states, Texas and California, accounted for 70 percent of the losses experienced by the Federal Savings and Loan Insurance Corporation in 1987 and 1988. To address this problem, title II limits the ability of states to permit the institutions they charter to take risks greater than those permissible for federally-chartered institutions.

Specifically, title II permits a state bank to engage in activities forbidden for a national bank (except as its customers' agent) only if the state bank is adequately capitalized and the FDIC concludes that the activity in question is consistent with the purposes of the Federal Deposit Insurance Act and poses no significant risk to the insurance fund. Similar rules will apply to bank subsidiaries. A well capitalized state bank will be allowed to engage in such activities if the FDIC does not disapprove the activity following 90 days notice. Congress previously adopted similar rules for state-chartered thrift institutions in the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA").

Annual Examinations

To ensure that regulators have current information about the institutions they supervise, title II generally requires regulators to conduct annual on-site examinations of all FDIC-insured institutions. Federal regulators may rely on State examinations of State institutions in alternate years. Small, well-capitalized, well-managed banks could be examined less frequently than once a year. Until 1994, a full on-site examination is not required more than once every 18 months, unless the insured institution received a less than satisfactory rating at its last examination or underwent a change of control.

Back-Up Enforcement Authority

Title II includes a provision giving the FDIC the ability to take enforcement actions against institutions when conditions pose a risk to the deposit insurance system if the institution's primary regulator, after a request from the FDIC, cannot or will not take such action. This provision conforms the FDIC's back-up enforcement authority over banks to the authority it already has for savings associations.

In summary, title II takes significant steps to reduce risks facing the deposit insurance system. It provides regulators with the tools they need to deal promptly and effectively with troubled banks, restricts risky bank activities, and eliminates policies that have increased the cost of bank failures. The Committee believes that, properly implemented, these reforms should reduce sharply the possibility that the taxpayers will ever have to pay for bank failures.

TITLE III—INTERSTATE BANKING AND BRANCHING

The McFadden Act currently limits the ability of national banks to branch across state lines. Currently, 34 states permit statewide branching, 15 states permit limited branching and only one generally prohibits branching. Several states have already authorized interstate branching.

The Bank Holding Company Act requires state authorization for banks to affiliate with other banks across state lines. Currently, 48 states allow banks they charter to affiliate with banks in other states through a holding company structure. At least 34 states allow such affiliations nationwide.

In light of the technological and other changes that have blurred the distinctions between distinct geographic banking markets, title III removes outdated restrictions on interstate banking and branching. Permitting interstate affiliations and branching may allow banks to diversify their asset portfolios in economically beneficial ways. In recent years regional economic declines have contributed to the failure of major banks in both Texas and New England. These reforms will reduce the likelihood of such failures. Interstate branching may also increase bank profitability by reducing administrative expenses for banks with operations in more than one state.

Title III phases out the current prohibitions on interstate affiliations and branching over a period of years. One year after the bill's enactment, an adequately capitalized, adequately managed bank holding company will be able to acquire a subsidiary bank in another state. Two years after enactment, such a bank holding company will be allowed to establish a subsidiary bank in another state.

After three years, title III will permit adequately capitalized, adequately managed banks to branch in any state that has not enacted legislation prohibiting interstate branching. Title III requires regulatory approval for each new branch, and adjusts the rating and evaluation mechanism of the Community Reinvestment Act to require analysis for each state or metropolitan area in which a bank operates. After three years, adequately capitalized, adequately managed foreign banks will enjoy the same branching rights permitted for national and state banks.

To prevent excessive concentration of economic power in a state, title III prohibits banks controlling over 10 percent of the nation's bank and thrift assets or over 30 percent of a given state's bank and thrift deposits to acquire existing banks or branches. States may waive the latter prohibition.

TITLE IV—REGULATORY RESTRUCTURING

The Committee is concerned that duplicative regulation may unnecessarily burden the banking industry and increase costs. Title IV accordingly promotes efficient bank regulation and examination by reconstituting the membership of the Federal Financial Institutions Examination Council and refining its mandate. The new Council will establish uniform policies and procedures for the examination of depository institutions and their holding companies. The Federal agencies will coordinate their examinations and generally must examine an institution at the same time. Title IV also requires that bank and thrift securities be registered with the SEC as are all other securities.

TITLE V—CONSUMER PROTECTION

The Committee has considered the needs of the consumers of banking services as well as providers. Banks have an obligation to treat their customers fairly. Public confidence is the foundation of the banking industry. Title V accordingly contains a number of provisions to ensure adequate protection for consumers.

Truth in Savings

First, title V includes the provisions of the Truth in Savings Act, which passed the full Senate by voice vote last year and previously passed the Senate in 1988 as part of the Proxmire Financial Modernization Act. This Act promotes informed comparisons between competing investment products by requiring banks to disclose to consumers basic information on yields and fees, including annual percentage yield on deposit accounts. The Act also prescribes uniform procedures for calculating interest on accounts and prohibits certain procedures for performing such calculation that, in the Committee's opinion, treat consumers unfairly.

Fair Lending Enforcement Act

Title V also includes the provisions of the Fair Lending Enforcement Act, which also passed the full Senate by voice vote last year. This Act strengthens regulatory enforcement of consumer protection measures in the financial services area by requiring bank regulators to establish consumer compliance programs with trained examiners. It combats mortgage discrimination by requiring lenders to provide rejected mortgage applicants with a copy of any appraisal performed at the applicant's expense. It also requires regulators to refer suspected credit discrimination violations to the Attorney General.

Access to Financial Services

As banking services grow ever more expensive, the need for reasonably priced, limited service accounts increases. Title V includes a provision requiring insured depository institutions to provide a basic transaction account and government check cashing services for a reasonable fee. The basic transaction account must allow up to 10 withdrawals by check or otherwise per month. The government check cashing service would apply to checks up to $1500. State and local government checks would have to be cashed only within the issuing state and locality. Title V permits institutions to make a profit from these services and includes important antifraud safeguards.

The Committee recognizes that compliance with the various consumer banking statutes involves costs for depository institutions. Title V accordingly requires regulators to examine existing procedures to determine whether current practices create an unnecessary burden on depository institutions. The bill directs the regulators to take any available steps to reduce unnecessary regulatory burdens, but requires that such steps not diminish current levels of compliance.

Title V also includes several specific measures to combat excessive regulatory burden. These include reforms to the Expedited Funds Availability Act that previously passed the Senate as part of the Money Laundering Enforcement Amendments of 1990, as well as amendments to the Real Estate Settlement and Procedures Act and the Truth in Lending Act.

TITLE VI—FOREIGN BANK SUPERVISION

Recent revelations about BCCI raise concerns that foreign banks operating in the United States are not adequately supervised. Title VI addresses that problem by providing heightened regulatory scrutiny of these banks. The increased supervisory requirements of the bill are based on legislation introduced by Chairman Riegle and Senators Garn and Kerry after consultation with the Federal Reserve.

Title VI requires prior Federal approval before a foreign bank may open a branch, agency or lending company in the United States. Even if a foreign bank already operates state-chartered branches, title VI requires that new branches be approved by the Federal Reserve. Before approving an application, regulators must have access to information about the bank to enforce compliance with our laws. The foreign bank must also be subject to consolidated regulation in its home country. Title VI authorizes the Federal Reserve to conduct simultaneous examinations of all of a foreign bank's American offices and gives Federal regulators the authority to close a foreign bank's state branch, agency or lending company.

Title VI requires foreign banks to report any loans to a person or group of persons secured by 25 percent or more of the stock of any domestic insured depository institution. This is designed to prevent incidents such as that in which control of First American Bank was obtained through lending by BCCI.

Title VI also eliminates preferential treatment of foreign banks operating in the United States by requiring that foreign banks exercise new securities powers on a level playing field with American banks. A foreign bank wishing to undertake expanded activities in the United States must have financial resources, including capital level, equivalent to that required of domestic banks engaging in such activities. The Federal Reserve Board will determine compliance with capital requirements after consultation with the Treasury. The Federal Reserve is given authority to require a foreign bank to place its banking operations in a separate U.S. banking subsidiary in order to exercise securities powers if the Federal Reserve has confidence in the management and financial strength of the foreign bank but cannot verify its worldwide capital position. Insured deposits may be accepted only through American subsidiaries, not branches of foreign banks. American and foreign banks will be subject to the same firewall and branching provisions. The grandfather rights now extended to investment banking operations of foreign banks will terminate.

Title VI also includes the Fair Trade in Financial Services Act, which has passed the Senate several times in recent years. This Act allows Federal regulators to take action against countries that discriminate against American firms. The Secretary of the Treasury may determine that a country discriminates against American financial institutions. Federal bank and securities regulators could then deny applications for regulatory approval filed by banks and securities firms from those countries. Denials would not force foreign firms to leave the American market, but they would not be able to expand until their home countries stop discriminating against American firms.

The marketplace for financial services is increasingly international and increasingly competitive. Title VI ensures that foreign institutions operating in the United States are properly supervised and do not enjoy unfair advantages.

TITLE VII—BANK POWERS AND AFFILIATIONS

Like the Proxmire Financial Modernization Act that passed the Senate in 1988 by a vote of 94 to 2, S. 543 allows banks to affiliate with securities firms. In effect the bill codifies certain decisions of the Federal Reserve Board, which in recent years has interpreted banking law to permit bank participation in securities activities. Congress must establish a framework to ensure that these activities do not put the Federal deposit insurance system at risk.

Title VII maintains the historical separation of banking and commerce. The Committee believes that banks owned by industrial companies would experience dangerous conflicts of interest that could compromise the soundness of the deposit insurance system. Combination of banking and industry would lead to an undesirable concentration of economic resources without any corresponding benefit to the banking industry or the taxpayers.

Title VII allows banks and securities firms to be owned by the same holding company. The Federal Reserve must give prior approval of a bank holding company's acquisition of a securities affiliate. The Federal Reserve must find that the holding company is adequately capitalized and well managed; has adequate internal controls and securities expertise; and that the acquisition will not imperil the holding company or its bank subsidiaries. Additionally, each of the holding company's subsidiary banks must be well capitalized and well managed. The securities affiliate must be registered with the SEC as a broker-dealer or investment adviser and be separately capitalized. To prevent undue concentration of economic resources, size restrictions prohibit the largest banking organizations (assets over $35 billion) from affiliating with the largest securities firms (assets over $15 billion).

To protect banks' insured deposits and prevent conflicts of interest, title VII includes numerous firewalls. The most important firewalls generally prohibit a bank from making loans or issuing guarantees to securities affiliates or investment companies sponsored by securities affiliates; buying or guaranteeing securities underwritten by securities affiliates or financing the payment of principal, interest or dividends on those securities; financing the purchase of securities underwritten by securities affiliates; using securities affiliates to securitize the bank's loans unless rated by an independent agency or guaranteed by a government agency; and sharing senior executive officers or directors with their securities affiliates. Title VII authorizes the Federal Reserve Board to grant specific limited exemptions to some of these provisions in the years after enactment.

Current law exempts banks from registration with the SEC as broker/dealers. Title VII preserves this exemption only for banks engaging in certain limited securities activities. Bank departments that act as investment advisers must register with the SEC. The SEC may discipline a bank serving as an investment adviser after notifying the bank regulator. To protect consumers, the SEC will require disclosure of any relationship between a bank and an investment company. The SEC will also require the investment company to disclose that its securities are not FDIC-insured and not guaranteed by a bank.

Title VII also includes several measures affecting the ability of banks and bank holding companies to engage in insurance activities. First, it permits national banks to sell insurance where, and to the extent that, state law authorizes state-chartered banks to sell insurance. Second, it restricts state-chartered banks to insurance underwriting activities permissible for national banks. Third, it restricts out-of-state insurance sales by bank subsidiaries of bank holding companies and their subsidiaries, requiring them to observe any restrictions on bank insurance sales imposed by the law of the state in which they seek to sell insurance. Title VII also includes customer protection measures restricting the use of confidential information by bank insurance operations, prohibiting banks from requiring the purchase of insurance from the bank as a condition of receiving credit, and forbidding the solicitation of an insurance sale required under a loan agreement until the bank has made a written commitment to fund the loan.

Finally, a bank generally may not sell its own or its affiliates' debt or equity in the bank's branches. This proposal passed the Senate last year as part of the National Affordable Housing Act but was dropped during conference.

Title VII strikes a balance between permitting banks new affiliations and powers that will increase efficiency and profitability and preserving economic competition and sound lending practices. It prohibits risky activities that would threaten the deposit insurance system while allowing banks to increase profits by entering new areas.

TITLE VIII—THRIFT-TO-BANK CONVERSIONS

Title VIII streamlines the process of converting from a thrift charter to a bank charter. It authorizes healthy thrifts to become banks without costly conversion methods or approval by the Office of Thrift Supervision. Thrifts becoming national banks would remain insured by the Savings Association Insurance Fund and could retain all existing branches. They would not receive any greater right to open new branches than other national banks have.

Title VIII further expresses the sense of Congress that the Internal Revenue Code should be amended so that a thrift converting to a national bank would not incur a tax penalty so long as it continues to meet the tax rule requiring it to have 60 percent of its assets in housing-related investments. Under current tax law, the thrift's bad-debt reserves are subject to immediate taxation if it converts to a national bank.

TITLE IX—MONEY LAUNDERING

Title IX incorporates the provisions of the Money Laundering Enforcement Amendments of 1990, which passed the Senate last year. The bill provides tougher sanctions for institutions convicted of money laundering, significantly increasing the deterrence factor of the law. As the Senate recognized in passing this legislation last year, there are significant gaps in our money laundering deterrence and enforcement schemes. The bill includes needed improvements to our enforcement mechanisms.

Title IX authorizes bank regulators to revoke the charter of any federally-chartered institution convicted of money laundering. The Attorney General must notify the appropriate banking regulator when an institution is convicted of money laundering. The regulator may consider factors including management's knowledge of the money laundering and the effect of the closing on the community in deciding whether to revoke the charter. Title IX further authorizes the FDIC to terminate Federal deposit insurance of state-chartered, federally-insured institutions convicted of money laundering.

Title IX authorizes bank regulators to remove an institution's affiliated parties, officers and directors who violated or knew of a violation of money laundering statutes. The bank regulators may suspend an affiliated party charged with a money laundering violation.

Depository institutions must notify the Treasury of unregistered check cashers, currency changers, and money transmitters holding accounts. Such businesses, as well as depository institutions, must keep records of international wire and other funds transfers. Title IX creates a Federal felony for conducting a money transmitting business without a state license.

The provisions of title IX, including the increased authority to close institutions that engage in money laundering, send a strong message that the United States is serious about prosecuting money laundering. This will deter potential money launderers within depository institutions.

TITLE X—LENDER LIABILITY

Title X addresses growing concerns about the impact of lender liability on the deposit insurance funds, the RTC, and small and medium-sized businesses. Title X limits an insured institution's liability under Federal law imposing strict liability for environmental contamination if the institution did not cause the pollution. The limitation applies to a property acquired through foreclosure, held in a fiduciary capacity, or held pursuant to a lease equivalent to a loan. The limitation also applies to property subject to the financial control or oversight of the institution.

Title X also protects Federal banking and lending agencies against liability under Federal, state and local laws imposing strict liability for environmental contamination if they did not cause the pollution. The limitation applies to property acquired through conservatorship or receivership, in connection with the provision of a loan, or through a civil or criminal proceeding. A purchaser of such property from a Federal agency will also be protected against liability, so long as the purchaser is not otherwise liable for the pollution or affiliated with or related to such a person.

Title X directs the Federal banking agencies to require depository institutions to evaluate potential environmental risks before making loans. The Secretary of Housing and Urban Development must do the same for mortgage lenders.

TITLE XI—MISCELLANEOUS

Title XI contains a number of miscellaneous provisions, only some of which are summarized here.

Title XI addresses growing concern about the health of the insurance industry. The Committee is aware that several large insurers have failed in recent months. Unfortunately, adequate information about the insurance industry is difficult to obtain because of the fragmented nature of insurance regulation. Title XI establishes an independent commission to assess the condition of the insurance industry and the insurance regulatory system. The commission is directed to make recommendations to Congress by January 31, 1993.

Title XI also makes certain improvements to the laws governing credit unions. These changes will strengthen safety and soundness while continuing to recognize that credit unions are unique among depository institutions. Title XI strengthens the financial soundness of individual credit unions. The NCUA will establish minimum capital standards for credit unions in existence at least five years. Title XI clarifies the loans-to-one-borrower restriction for credit unions as the greater of 20 percent of capital, 1.5 percent of assets, or $100,000. The solvency of the National Credit Union Share Insurance Fund is also enhanced.

In the area of securities, title XI provides for needed disclosure to customers of brokerage firms. The Securities Investor Protection Corporation protects customer accounts of brokerage firms against the failure of those firms. Title XI requires the SEC to adopt a rule requiring brokers and dealers, and their associated persons, to notify customers in writing of SIPC coverage and whether the broker or dealer is a member of SIPC. This notice will provide consumers with additional information in deciding where and how to invest their money. Title XI also clarifies that the Federal Reserve may provide liquidity to securities firms; gives the SEC the same authority to set the compensation of its employees as the Federal banking agencies have for their employees; and establishes a statute of limitations for certain private rights of actions under the Federal securities laws.

Title XI includes certain changes to the laws governing thrift institutions. The "qualified thrift lender test" currently requires a thrift institution to keep a percentage of its assets in housing-related loans and property in order to qualify for Federal Home Loan Bank advances and greater activities and branching powers. Title XI reduces the required percentage of qualified assets a thrift must maintain; increases the percentage of liquid assets a thrift may deduct from its total assets before applying the qualifying test; and increases the amount of consumer loans that may be treated as qualified thrift assets.

Finally, title XI provides for minting new $1 coins. The new coins will be gold in color and be distinguishable from other coins.

LEGISLATION HISTORY

On September 25, 1990 the Chairman of the Committee on Banking, Housing and Urban Affairs, Senator Donald W. Riegle, Jr., introduced S. 3103, the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1990. No action was taken on that legislation in the 101st Congress.

On March 5, 1991, Chairman Riegle introduced a nearly identical bill, S. 543, the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991. The bill was cosponsored by Senators Christopher Dodd and Timothy Wirth. This bill became the vehicle for the Senate Banking Committee's comprehensive banking reform legislation. Most of the provisions in S. 543 as introduced were incorporated in Title II of the S. 543 Committee Print, which was publicly released on July 16, 1991. The Banking Committee marked up the S. 543 Committee Print on July 31 through August 2, 1991. On August 2, 1991 the Committee voted to report S. 543 as amended to the full Senate. The vote to report the bill was 12 to 9, with 6 Democrats and 6 Republicans voting in favor. Voting to report the bill were Chairman Riegle and Senators Cranston, Dodd, Dixon, Sanford, Shelby, Garn, Bond, Mack, Domenici, Kassebaum and Chafee. Opposed were Senators Sarbanes, Sasser, Graham, Wirth, Kerry, Bryan, D'Amato, Gramm and Roth.

The Banking Committee's action followed 17 hearings on specific bank reform issues in 1990 and a series of 22 hearings on financial modernization issues in 1991. Following is a list of the 1990-91 hearings on financial modernization issues and the witnesses who testified.

Testifying on "Deposit Insurance Reform and Financial Modernization" (printed as S. Hrg. 101-973, Vol 1-3) were: on April 3, 1990, Robert F. Downey, Chairman, Securities Industries Association and partner, Goldman Sachs, New York, N.Y.; and Thomas G. Labrecque, President and Chief Executive Officer, Chase Manhattan Corp., New York, N.Y., representing the American Bankers Association, the Association of Bank Holding Companies, the Association of Reserve City Bankers, the Bank Capital Markets Association, and the Consumer Bankers Association.

On April 18, 1990, Sherry Ettleson, staff attorney, Public Citizen; Peggy Miller, Legislative Representative, Consumer Federation of America; and Jane Uebelhoer, Legislative Director, Association of Community Organizations for Reform Now (ACORN).

On April 24, 1990, Kenneth Whipple, President, Ford Financial Services Group, representing the Financial Services Council; Philip Vallandingham, President, Independent Bankers Association of America, and President, the First State Bank of Barboursville, Barboursville, W.V.; and David Silver, President, Investment Company Institute.

On April 26, 1990, Norman D. Flynn, President, National Association of Realtors; Stephen J. Friedman, Executive vice-president and general counsel, Equitable Life Assurance Society of the United States, New York, N.Y., representing the American Council of Life Insurance; and William V. Irons, Rhode Island State Senator, President, Irons and Associates, Rumford, R.I., representing the National Association of Life Underwriters.

On May 3, 1990, E. Gerald Corrigan, President, Federal Reserve Bank of New York. On May 17, 1990, Lawrence Connell, President and Chief Executive Officer, San Jacinto Savings Association, San Jacinto, Texas; Bert Ely, President, Ely & Co., Alexandria, Virginia; and Kenneth Scott, Parsons Professor of Law and Business, Stanford Law School, Stanford, California.

On May 22, 1990, James R. Barth, Lowder Eminent Scholar in Finance, Auburn University, Auburn, Alabama; Lowell L. Bryan, Director, McKinsey & Co., New York, N.Y.; and George G. Kaufman, John F. Smith, Jr. Professor of Economics and Finance, Loyola University of Chicago, Chicago, Illinois.

On June 13, 1990, Peter Leslie, Deputy Chairman, Barclays Bank PLC, London, England; Ulrich Cartellieri, Member, board of managing directors, Deutsche Bank AG, Dusseldorf, Federal Republic of Germany; and Toru Kusukawa, Deputy President, the Fuji Bank, Limited, Tokyo, Japan.

On June 20, 1990, W. Peter Cooke, Chairman, World Regulatory Advisory Practice, Price Waterhouse, London, England; Jeffrey S. Chisholm, Vice-Chairman, the Bank of Montreal, Toronto, Canada; and David D. Hale, Chief Economist and First Vice President, Kemper Financial Services, Inc., Chicago, Illinois.

On July 12, 1990, Alan Greenspan, Chairman, Board of Governors of the Federal Reserve System.

On July 19, 1990, Richard C. Breeden, Chairman, Securities and Exchange Commission.

On July 25, 1990, Nicholas F. Brady, Secretary of the Treasury.

On July 31, 1990, L. William Seidman, Chairman, Federal Deposit Insurance Corporation; and Robert Clarke, Comptroller of the Currency.

Testifying on "Fraud In America's Depository Institutions" (printed as S. Hrg. 101-1130) were: on August 1, 1990, Richard Fogel, Assistant Comptroller General, General Accounting Office; Benton Gup, Chair of Banking Department, University of Alabama; and Bruce Maffeo, former Assistant United States Attorney for the Southern District of New York.

Testifying on the "Banking Regulators' Report On Capital Standards" (printed as S. Hrg. 101-1057) on September 10, 1990 were: Robert L. Clarke, Comptroller of the Currency; L. William Seidman, Chairman, Federal Deposit Insurance Corporation; Timothy Ryan, Director, Office of Thrift Supervision; Wayne D. Angell, Member, Board of Governors, Federal Reserve System; and Richard C. Breeden, Chairman, Securities and Exchange Corporation.

Testifying at the "Oversight Hearings on Condition of the Bank Insurance Fund" (printed as S. Hrg. 101-1102) were: on September 11, 1990, Charles A. Bowsher, Comptroller General of the United States, General Accounting Office. On September 12, 1990, Robert D. Reischauer, Director, Congressional Budget Office; Michael DeStefano, Vice-President, Standard & Poors Corporation; and Robert Eisenbeis, Wachovia Professor of Banking, University of North Carolina at Chapel Hill.

To begin the 1991 series of hearings, Secretary of the Treasury Nicholas Brady came before the Committee on February 26, 1991 to present the Administration's bank reform proposal.

Testifying on March 5, 1991 on the CBO's analysis of the Treasury proposal was Robert Reischauer, Director of the Congressional Budget Office.

Testifying on March 7, 1991 on the GAO's analysis of the Treasury proposal was Charles Bowsher, the Comptroller General of the U.S.

On March 12, 1991, testifying on "Deposit Insurance Reform and Prompt Corrective Action" were James Barth, Lowder Eminent Scholar in Finance, Auburn University, Auburn, Alabama; Robert Eisenbeis, Wachovia Professor of Banking, University of North Carolina at Chapel Hill; amd Robert Litan, Senior Fellow, Brookings Institution.

Testifying on March 20, 1991 on "Interstate Banking" were: Robert Carswell, Sherman & Sterling and former Deputy Secretary of the Treasury; Ken Littlefield, Texas Banking Commissioner, representing the Conference of State Bank Supervisors; Hugh McColl, Jr., Chairman and Chief Executive Officer, NCNB Corporation; and Edwin Gordon Hebb, Jr., Hebb & Gitlin and former Chairman, Connecticut Commission on Inter-State Banking.

Testifying on "BIF Recapitalization" on March 21, 1991 were: L. William Seidman, Chairman, Federal Deposit Insurance Corporation; and Robert Glauber, Under Secretary of the Treasury.

Testifying on April 9, 1991 on "RTC Reform Proposals" were: Anthony Frank, Postmaster General; Martin Mayer, author, The Greatest Ever Bank Robbery; Marshall Breger, Chairman, the Administrative Conference of the United States; David Braun, Director, The Nature Conservancy; Jim Davidson, Chairman, National Taxpayers Union; and Chris Lewis, Co-Chair, Financial Democracy Campaign.

On April 11, 1991, testifying on "Regulatory Restructuring" were: Senator William Proxmire, former Chairman, Senate Banking Committee; Steven M. Roberts, National Director of Financial Institutions Regulation, KPMG Peat Marwick; Bernard Shull, Professor, Hunter College, City University of New York; David Holland, Chairman and Chief Executive Officer, Boston Federal Savings Bank, Burlington, Massachusetts; Wolfgang Reinicke, Research Associate, Brookings Institution. Also attending were: Senator John Chafee, Senator Claiborne Pell, Governor Bruce Sundlun, Senator Bob Kerrey, and Congressman Bruce Vento.

On April 19, 1991, testifying on "Risk-Based Premiums" were: William R. Watson, Director, Division of Research and Statistics, FDIC; Roberto Mendoza, Vice Chairman, J.P. Morgan & Co. and Morgan Guaranty Trust Company of New York; Robert Clements, Chairman, Marsh and McLennan, Inc.; and John Caouette, President and Chief Executive Officer, Capital Markets Assurance Corporation, on behalf of The Association of Financial Guaranty Insurors.

Testifying on "Deposit Insurance Reform and Regulation" on April 23, 1991 were: Alan Greenspan, Chairman of the Board of Governors of the Federal Reserve System; L. William Seidman, Chairman, Federal Deposit Insurance Corporation; and Robert Clarke, Comptroller of the Currency.

Testifying on April 25, 1991 on the "Perspectives of Public Interest Groups" were: Michele Meier, Counsel for Government Affairs, Consumers Union; Sherry Ettleson, Public Citizen's Congress Watch; Allen Fishbein, General Counsel, Center for Community Change; Edmund Mierzwinski, Consumer Advocate, U.S. PIRG; Michael Aronstein, President, Comstock Partners, Inc., on behalf of the National Taxpayer's Union; Joan King, American Association of Retired Persons; and Sharon Bush, Board Member, New York ACORN.

Testifying on "BIF Recaptitalization" on April 26, 1991 were: Charles Bowsher, Comptroller General of the U.S., GAO; Felix Rohatyn, Senior Partner, Lazard Freres and Company; Lloyd Cutler, Senior Partner, Wilmer, Cutler and Pickering; Christopher James, Professor, University of Florida; and Roger Kormendi, Professor of Business Economics and Public Policy, School of Business Administration, University of Michigan.

On May 7, 1991, testifying on "Pending Legislation for Deposit Insurance Reform" were: Richard Breeden, Chairman of the Securities and Exchange Commission; Timothy Ryan, Director of the Office of Thrift Supervision; and Roger Jepsen, Chairman of the National Credit Union Administration.

Testifying on May 8, 1991 on "Financial Modernization" was Paul Volcker, Chairman, James D. Wolfensohn, Inc. and former Chairman of the Board of Governors of the Federal Reserve System.

Testifying on May 9, 1991 on "Industry Perspectives" were: Richard Kirk, Chairman and Chief Executive Officer, United Bank of Denver, representing the American Bankers Association; David Ballweg, President, Community State Bank, Union Grove, Wisconsin, representing the Independent Bankers Association of America; Eugene Miller, Chairman and Chief Executive Officer, Coamerica, representing the Asscciation of Bank Holding Companies; James Daniel, President, The Friendly Bank, Oklahoma City, Oklahoma, representing the Community Bankers Association; Donald Shackelford, Chairman and Chief Executive Officer, State Savings Bank, Columbus, Ohio, representing the U.S. League of Savings Institutions; Edward Lorenson, Chairman and President, Bristol Savings Bank, Bristol, Connecticut, representing the National Council of

Savings Institutions; and John Seymour, Illinois Commissioner of Savings and Residential Finance, representing the American Council of State Savings Supervisors.

Testifying on May 15, 1991 on "Banking and Commerce" were: E. Gerald Corrigan, President of the Federal Reserve Bank of New York; and Henry Kaufman, President, Henry Kaufman & Co.

Testifying on May 16, 1991 on "Industry Perspectives" were: David Silver, President, Investment Company Institute; Gedale Horowitz, Chairman, Securities Industry Association; Peggy Miller, Consumer Federation of America; and Lee M. Smith, Vice President of Government Relations and Industry Affairs, Mutual Life Insurance Company of New York, representing the American Council of Life Insurance, the National Association of Life Companies, the American Insurance Association, and the National Association of Independent Insurers.

Testifying on May 22, 1991 on "Well-Run Institutions" were: John G. Medlin, Jr., Chairman and Chief Executive Officer, Wachovia Corporation; Herbert M. Sandler, Chairman and Chief Executive Officer, World Savings & Loan Association, Oakland, California; John B. McCoy, Chairman and Chief Executive Officer, Banc One Corporation, Columbus, Ohio; Robert E. Schrull, President and Chief Executive Officer, Brattleboro Savings & Loan Association, Brattleboro, Vermont; and on "Industry Perspectives" were Bob Elrod, First Vice President Nominee, National Association of Realtors; Janet Miller, Credit Union National Association; John M. Stanton, President, National Association of Federal Credit Unions; and Francis J. Wald, The Wald Agency. Irving W. Bailey, Chairman, President and Chief Executive Officer, Capital Holding Corporation, representing the Financial Services Council. was unable to testify in person and submitted written testimony.

TITLE I—BANK INSURANCE FUND RECAPITALIZATION

Title I provides the FDIC with borrowing authority to meet the liquidity needs of the Bank Insurance Fund and established requirements for repayment of FDIC borrowings and recapitalization of the Fund.

A. INTRODUCTION

Close on the heels of the savings and loan crisis, America now confronts serious problems in its banking industry. Federally insured banks are failing in record numbers, for many of the same reasons that have caused thrift institutions to fail—high-risk investments, imprudent growth, poor management, and recession. Like the Federal Savings and Loan Insurance Corporation before it, the Bank Insurance Fund (BIF) stands on the brink of insolvency.

The Federal government's response to the problems of the banking industry will play a critical role in determining whether the problems of America's banks can be resolved without cost to America's taxpayers. According to the Congressional Budget Office, "the cost of not closing thrifts when they first became book-value insolvent represents over half of the estimated $127 billion cost (in 1990 dollars) of resolving the 1,130 thrifts [that were either resolved during the period 1980 through 1990 or are projected to be resolved in 1991.]"[1] If Federal banking regulators repeat the mistakes of the past—allowing weak, unsound, institutions to remain open for business even as their losses continue to mount—the banking crisis could well grow, exhausting the banking industry's ability to fund the BIF's losses, and becoming another major liability for America's taxpayers.

This worst case scenario need not come to pass. Prompt regulatory action to close failed banks and correct the problems of troubled banks could yet save the banking industry billions of dollars and avert the need for a taxpayer rescue of the Bank Insurance Fund. But, for two reasons, prompt regulatory action will not occur without legislation. First, the Federal Deposit Insurance Corporation ("FDIC") currently lacks the resources to close failed institutions. Second, although the FDIC and the Federal bank regulators already have the statutory authority to take prompt corrective action, they have frequently declined to exercise it, apparently because they feel they lack a clear mandate from the Congress. As former Federal Home Loan Bank Board economist James Barth told the Committee on March 12, 1991,

> [T]he regulatory authorities have the power, have had the power, do have the power, and will have the power to do their job. That's why, unfortunately, I don't think they've done a good job. * * * [Congress] must require that they do their job.[2]

Taken together, titles I and II of S. 543 give the Federal banking regulators and the Bank Insurance Fund both the resources and the mandate to protect America's taxpayers through prompt, effective regulatory action. Based on current projections of the banking industry's problems, the Committee believes that rapid enactment of S. 543 can be effective in preventing a taxpayer bailout of the BIF.

1. History of the Deposit Insurance Funds

The Great Depression of the 1930s brought with it the near collapse of America's banking system. In the wave of bank failures that began in the early 1920's and crested in 1933, over 14,000 banks failed.[3] While many of these institutions were destined to fail—in the sense that ill-advised or unfortunate investments brought about their insolvency—many others failed because of depositor runs. Banks with insufficient cash found themselves unable either to borrow funds or to liquidate assets quickly and profitably enough to meet demands for withdrawals from panicky depositors. Depositors in America's banks lost, in 1991 dollars, over $19.4 billion. For many of those depositors, these losses represented a substantial percentage of their life savings.

In early 1933, the Depression-era bank problem reached crisis proportions. In January and February of that year alone, 4,000 banks suspended operations. Over 2 percent of all bank deposits were lost.[4] In response to the crisis, Congress enacted the Federal Deposit Insurance Act of 1933. The Act extended deposit insurance to commercial banks and many savings banks, established the FDIC to administer the deposit insurance system, and created the deposit insurance fund for commercial banks. Subsequent legislation in 1934 established the Federal Savings and Loan Insurance Corporation and extended deposit insurance coverage to thrifts.

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[1] Congressional Budget Office (Staff Memorandum), *The Cost of Forbearance During the Thrift Crisis*, 1 (June 1991).

[2] Testimony of James Barth before the Senate Banking Committee, tr. at 10 (March 12, 1991).

[3] Congressional Budget Office, *Reforming Federal Deposit Insurance*, 9 (September 1990).

The deposit insurance system established in the 1930s virtually eliminated bank runs, and doubtless contributed significantly to the remarkable stability of the American banking industry from the mid-1930s until the 1980s. Chart 1 shows the total number of bank and thrift failures for each year since 1934. As the chart shows, the number of failures was remarkably low from the early 1940s through the late 1970s—a period of almost 40 years.

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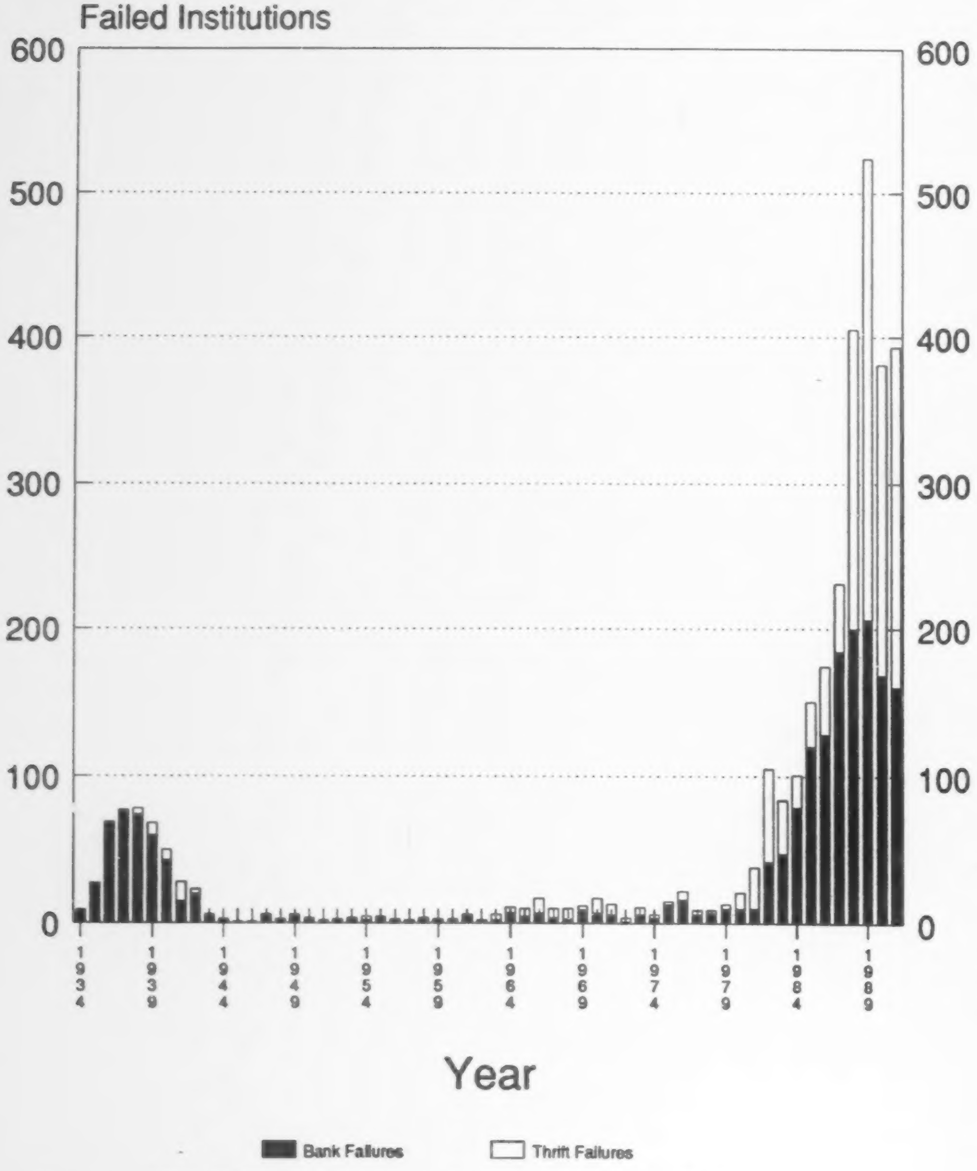
[4] *Id.*

Chart 1

Failed Depository Institutions

1934 - 1991



Sources: CBO, RTC, OTS (includes Category IV thrifts), FDIC (1991 projections as of 6/27/91 FDIC baseline).

Beginning in the early 1980s, however, the savings and loan and commercial banking industries both began to experience extraordinary numbers of failures, severely taxing the deposit insurance system—especially the deposit insurer for savings and loans, the Federal Savings and Loan Insurance Corporation ("FSLIC"). By the late 1980s, the FSLIC had become deeply insolvent.

In response to the FSLIC's insolvency, Congress enacted the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"). FIRREA significantly changed the administrative structure of the federal deposit insurance system by abolishing the FSLIC, establishing a new deposit insurance fund for savings and loans, the Savings Association Insurance Fund ("SAIF"), and redesignating the existing deposit insurance fund for commercial banks as the Bank Insurance Fund. FIRREA also established a "designated reserve ratio" of fund reserves to insured deposits of 1.25 percent for both the BIF and the SAIF, and placed both funds under FDIC administration. FIRREA also created a third fund under FDIC administration, the FSLIC Resolution Fund, to wind up the affairs of savings and loans failing in the years immediately prior to FIRREA's enactment. Finally, FIRREA established the Resolution Trust Corporation ("RTC") to administer the resolution of several hundred savings and loans expected to fail after FIRREA's enactment.

2. Industry's Responsibility for Losses

America's system of deposit insurance and bank regulation is structured to make the banking industry's own resources the primary bulwark against the costs of bank failures. When a bank incurs losses, the system requires that they be paid first out of the bank's own capital. Should that capital prove inadequate, the system makes the resources of the BIF available for the limited purpose of protecting depositors. Only when the BIF itself is exhausted does the question of taxpayer payment for the costs of bank losses arise.

Under the deposit insurance system as it has existed since its inception, the Federal Deposit Insurance Corporation (FDIC) has financed the deposit insurance fund for banks through a semiannual, flat-rate assessment on the domestic deposits of all insured banks. Until 1990, this assessment never exceeded .083 percent (8.3 basis points) of domestic deposits. Through the mid-1980s, however, even this low assessment rate sufficed to maintain the insurance fund for banks at a level of reserves—traditionally, approximately 1.25 percent of insured deposits—more than adequate to cover all expenses incurred in protecting depositors of failed banks. Indeed, prior to 1985, the FDIC was required to rebate a portion of the premiums assessed in order to keep the BIF's reserves below 1.4 percent of insured deposits.

In 1990, in response to mounting concern over the deteriorating condition of the BIF (described below), the Committee originated and reported legislation, the FDIC Assessment Rate Act of 1990, reaffirming the banking industry's responsibility to meet demands on the BIF. That legislation, enacted into law as Subtitle A of title II of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101-508, removed previous statutory limits on the FDIC's ability to raise deposit insurance assessments on insured banks and directed the FDIC to impose assessments sufficient to maintain the BIF at the 1.25 percent designated reserve ratio or "increase the reserve ratio to the designated reserve ratio within a reasonable period of time."

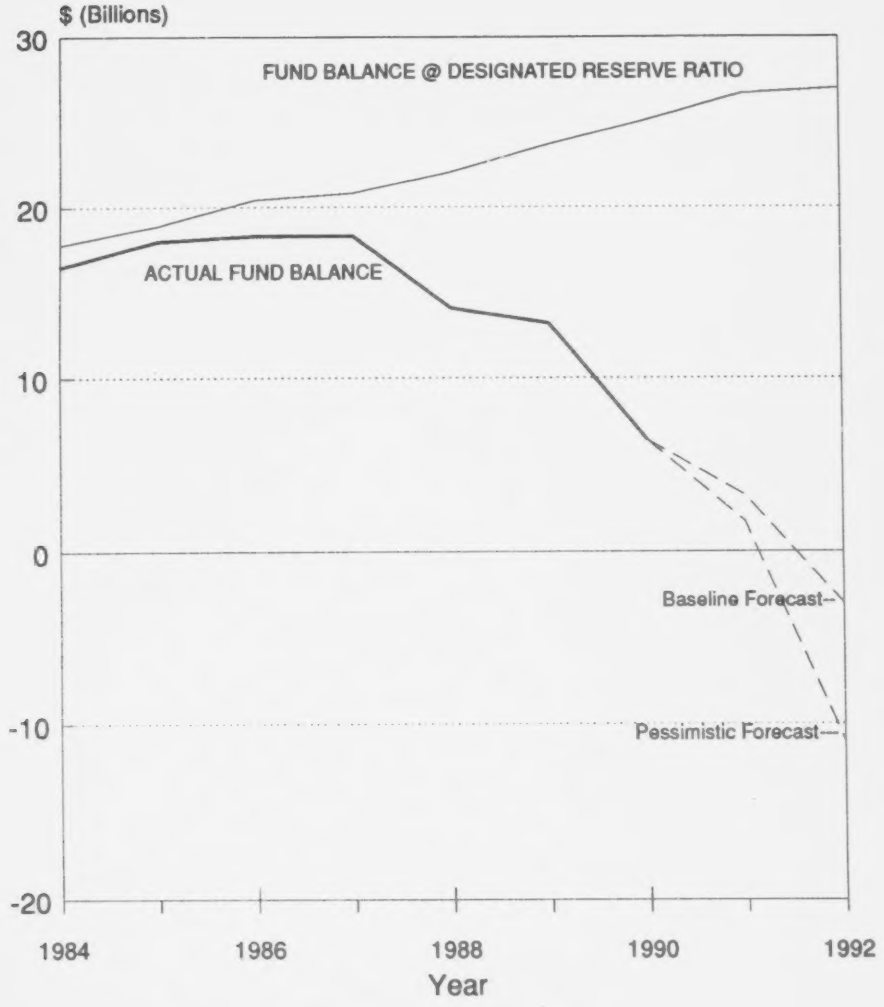
3. The BIF's Condition is Deteriorating

The reserves of the deposit insurance fund for commercial banks began to decline in the mid-1980s—first, in 1986, as a percentage of insured deposits and then, in 1988, in absolute dollars. This decline has continued through the present and a virtual consensus exists that the BIF's reserves will likely continue to fall at least through 1992. No consensus exists, however, regarding the ultimate extent of the BIF's losses.

Charts 2 and 3 trace the decline of the BIF's fund balance and reserve ratio. Chart 2 shows that the Fund's balance has declined precipitously since 1987. By 1992, according to the FDIC's most recent baseline projection, the Fund will stand almost $30 billion short of its historical, and statutorily-mandated reserve level of 1.25 percent of insured deposits, with negative net worth of some $3 billion. Under the FDIC's pessimistic scenario, the shortfall could approach $40 billion, and the BIF could have negative net worth of some $11 billion.

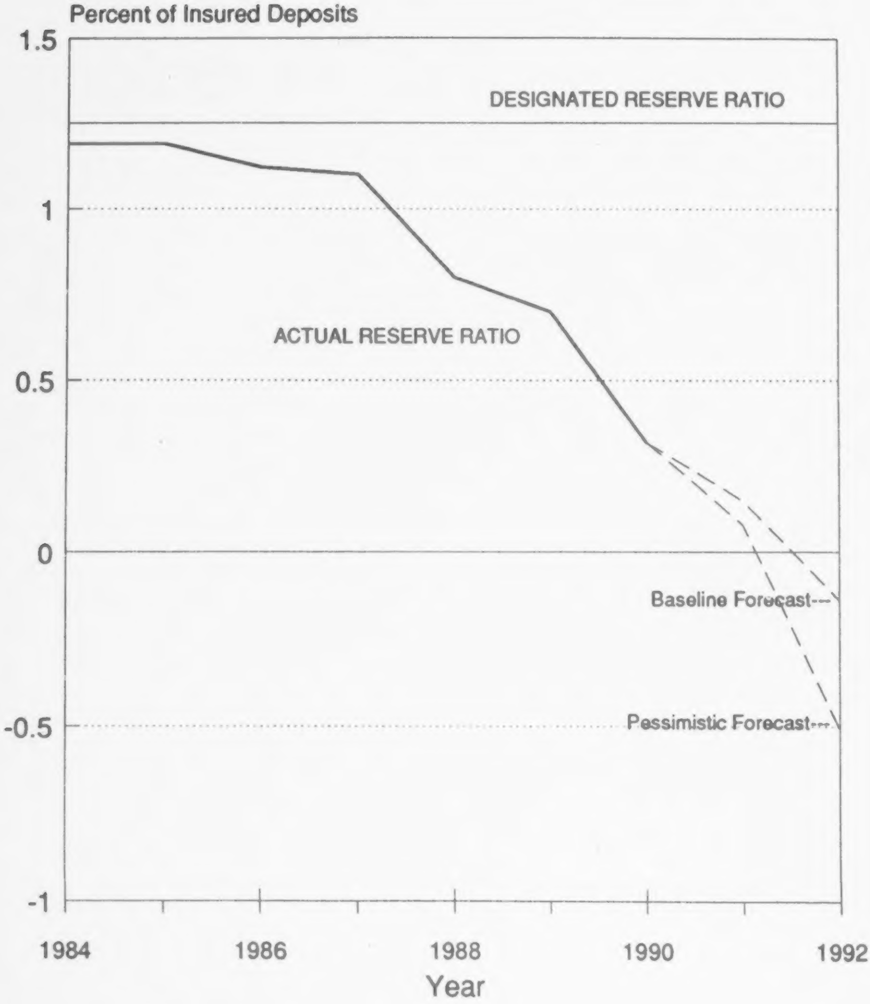
Chart 3 shows the decline of the BIF's reserve ratio. From a level of approximately 1.19 percent of insured deposits, the reserve ratio has fallen every year since 1985. Under the FDIC's pessimistic scenario, the ratio could be as much as −0.51 percent of insured deposits by year-end 1992.

Chart 2
BIF Fund Balance
1984 - 1992



Source: FDIC (1991, 1992 projected)

Chart 3
BIF Reserve Ratio
1984 - 1992



Source: FDIC (1991, 1992 projected)

The Federal banking regulators and the Administration were slow to recognize the developing problems of the banking industry and the BIF. Through the summer and fall of 1990, the FDIC denied the existence of any problem that might require legislative action. Thus, on July 31, 1990, the FDIC told the Committee that "[a]s far as we can tell now, the fund is adequate to meet any failures that we can identify at this point."

In testimony before the Banking Committee on September 11, 1990, however, the Comptroller General of the United States, Charles Bowsher, projected that the BIF would incur substantial losses and could easily face insolvency without prompt action to shore up its reserves. Comptroller General Bowsher told the Committee:

> Not since its birth during the Great Depression has the federal system of deposit insurance for commercial banks faced such a period of danger and uncertainty as it does today. Issues arising from our audit of the Bank Insurance Fund's 1989 financial statements * * * cause us both apprehension and concern for the safety and soundness of the Fund in the 1990s.[5]

The Comptroller General issued a clear warning to the regulators:

> [O]ne of the clear signals that has got to be given by this Committee is to the regulators to really dig deep now and find out what the extent of the problems are and what are the corrective actions that have to be taken. And we shouldn't be complacent. * * * [W]e don't have the luxury of assuming that things are going to work themselves out.[6]

The next day, the Director of the Congressional Budget Office ("CBO"), Dr. Robert Reischauer, delivered a similar warning. Dr. Reischauer testified:

> [T]he Bank Insurance Fund * * * is very vulnerable. The Fund will have adequate funds over the next few years if losses decline from the current levels * * * But the Fund could easily run out of cash if a weaker economy or some other factor produced continued substantial losses. The failure of one very large bank could, by itself, deplete the fund.[7]

Even after the testimony of the GAO and the CBO, the FDIC continued to deny the existence of a threat to the BIF's solvency. On October 25, 1990, the FDIC advised the Committee that "[t]he banking industry is relatively healthy and improving" and stated that the FDIC saw "nothing on the horizon raising any significant threats to the Bank Insurance Fund."

Notwithstanding the FDIC's assurances, in the fall of 1990 the Committee originated and reported legislation, the FDIC Assessment Rate Act of 1990, removing statutory limits on the FDIC's ability to raise deposit insurance assessments. While that legislation was enacted as part of the Omnibus Budget Reconciliation Act of 1990, however, the FDIC has to date raised premiums only to 23 basis points—less than the maximum level permissible under the law prior to the 1990 legislation.

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[5] Statement of Charles Bowsher, S. Hrg. 1102, 101st Congress, 2d Sess., 16 (September 11, 1990).

[6] *Id.*, 69.

[7] *Id.*, 98 (September 12, 1990).

In January, 1991, the CBO, again in testimony before the Committee, released a revised, gloomier, forecast, for the BIF. CBO Director Reischauer told the Committee on January 29, 1991:

> Our latest estimates are more pessimistic than those that I shared with this Committee in early September. The projections of the Fund's contingent liabilities which I discussed in September indicated that the Fund would have losses of about $21 billion over the three and a half year period that began in January of 1990. Our current estimate suggests losses of close to $30 billion over a three and a half year period that began in July of 1990.[8]

At approximately the same time, the Office of Management and Budget ("OMB") released its own forecast, even more dire than that of the CBO. Assuming that the FDIC maintains deposit insurance premiums at 23 basis points, the OMB projected that the Fund balance would continue to decline through FY 1996, to a negative net worth of more than $22 billion. The OMB subsequently reaffirmed that projection in July 1991.

In testimony before the Committee in March, 1991, the FDIC acknowledged the existence of a potential threat to the solvency of the BIF, but presented as the FDIC's "baseline estimate" a projection that the Fund would remain solvent through 1992 and indicated that the Fund's reserves would decline below zero only under a pessimistic scenario. The FDIC was careful to note, however, that it did not disagree with projections that the BIF's reserve balance would decline to somewhere between −$5 and −$15 billion by 1993.

In April 1991, the GAO, in presenting to the Committee the preliminary results of its audit of the BIF's 1990 financials, reported that the FDIC had overstated the BIF's year-end 1990 reserves by at least $3 billion. Comptroller General Bowsher testified that the GAO had concluded that the BIF's reserves as of year-end 1990 were not $8.5 billion, as previously estimated by the FDIC, but no more than $5 billion. In response to the GAO audit the FDIC later restated its year end 1990 reserve as $4.0 billion—a mere 0.21 percent of insured deposits, the lowest reserve ratio in the history of the bank insurance system.

In July, 1991, in testimony before the House Budget Committee, the FDIC issued a revised projection for the BIF indicating the Fund's probable insolvency in 1992. By letter dated July 30, 1991, Chairman Seidman advised members of the Senate Banking Committee that "it would be imprudent and unwise for the Congress to go beyond October 1991 without a recapitalization plan in place" for the BIF, and indicated the BIF may require expanded borrowing authority before the end of 1991. Comptroller General Bowsher has stressed the need for legislation in even starker terms. In a

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[8] Testimony of Robert Reischauer before the Senate Banking Committee, tr. at 15–16 (January 29, 1991).

July 31, 1991, letter to members of the Committee, he stated that "without recapitalization the Fund will be billions of dollars in the red by the end of this year."

Table 1 summarizes several recent projections of the BIF's condition.

TABLE 1—RECENT PROJECTIONS OF BIF FUND BALANCE

	1990	1991	1992	1993	1994	1995	1996
OMB [1]	10.5	4.4	−2.2	−9.1	−15.3	−19.3	−22.2
CBO [2] (Jan. 1991)	10.5	1.4	−2.8	−2.6	−1.0	−0.9	4.2
CBO (Sept. 1991) [3]	10.5	3.0	−1.6	−1.5	−0.4	2.4	6.3
FDIC [4] (Jan. 1991):							
Baseline	8.5	3.9	2.4	N/A	N/A	N/A	N/A
Pessimistic	8.5	0.0	−5.8	N/A	N/A	N/A	N/A
FDIC [6] (July 1991):							
Baseline	4.0	3.2	−3.0	N/A	N/A	N/A	N/A
Pessimistic	4.0	1.7	−11.0	N/A	N/A	N/A	N/A
GAO [6]:							
Low losses	5	3	6	10	N/A	N/A	N/A
High losses	5	−3	−2	−1	N/A	N/A	N/A
Required reserves (@1.25 percent) [7]	24.5	25.6	26.8	28.0	29.2	30.5	31.9

[1] Office of Management and Budget, Midsession Outlay Estimates Back-up Sheets. Correspondence with Senate Banking Committee (July 19, 1991). Figures as of fiscal year-ends. Assumes 23 basis point premium.

[2] Testimony of Robert D. Reischauer before the Senate Banking Committee (January 29, 1991). Assumes deposit insurance premium increase to 30 basis points by January 1, 1993.

[3] Congressional Budget Office, Midsession Outlay Estimates Back-up Sheets. Correspondence with Senate Banking Committee (Sept. 27, 1991). Figures as of fiscal year-ends. Assumes deposit insurance increase to 30 basis points by January 1, 1993.

[4] FDIC, "Overview of the Bank Insurance Fund," 5 (January 31, 1991).

[5] Testimony of L. William Seidman before the House Budget Committee, Attachment 1 (June 27, 1991). 1990 figures reflect FDIC/GAO agreement to reduce 1990 calendar year end balance to show reserves of $8.6 billion for expected future resolutions. On June 30, 1991, the balance was $4.5 billion.

[6] Statement of Charles A. Bowsher before the Senate Banking Committee, Table 3 (April 26, 1991). Assumes premium increase to 30 basis points in July, 1991.

[7] Assumes annual deposit growth of 4.5%.

B. THE NEED FOR LEGISLATION

1. The Consequences of Inaction

Without legislation to ensure the continued liquidity of the BIF, the FDIC will be unable to close failed commercial banks. Several witnesses have testified before the Committee that failure to close failed savings and loans in a timely manner contributed substantially to the cost of the thrift crisis. The Committee believes it is essential that the BIF have sufficient resources to ensure the FDIC's ability to take timely, effective action to resolve the problems of failed banks. As CBO Director Reischauer told the Committee on March 5, 1991,

> One clear lesson of the thrift crisis was that delay in closing failed institutions because of financial constraints of the deposit insurer added greatly to the costs of resolving them. Making sure that the BIF has enough money to resolve failed banks in a timely fashion is critical to keeping costs down. [9]

Similarly, Comptroller General Bowsher testified on March 7, 1991 that:

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[9] Written statement of Robert Reischauer before the Senate Banking Committee, 30 (March 15, 1991).

> a bitter lesson from the thrift industry debacle is that the Bank Insurance Fund must have the financial resources to promptly deal with weakened or insolvent banking organizations. Otherwise, the improved auditing, financial and management reforms * * * and more stringent action by regulators * * * will have little credibility.[10]

Indeed, there is concern that the FDIC may already be delaying closings of troubled banks to conserve the BIF's scarce cash. Through September 16, 1991, regulators had closed 87 banks in 1991—a rate of closure below what the FDIC's projection of 160–180 bank failures in 1991 would seem to suggest necessary.

2. Constraints of Current Law

To enable it to continue its important work of closing failed banks, the BIF requires access to substantial amounts of cash. Current projections of the banking industry's condition indicate that it should be possible to raise the needed cash from the industry itself over a period of several years. But the BIF's cash needs cannot wait several years. Moreover, the FDIC cannot meet the BIF's cash needs by borrowing because current law sharply limits the FDIC's ability to borrow on behalf of the BIF. Currently, the BIF may borrow up to $5 billion plus 9 times the Fund's net worth. Thus, under current law, as the BIF's net worth declines, its ability to borrow diminishes.

3. Provisions of S. 543

Title I of S. 543 would address the BIF's liquidity needs by giving the BIF two extraordinary lines of credit allowing the BIF to borrow immediately the funds it needs. The banking industry will repay these borrowings over several years through deposit insurance premium assessments. This approach is broadly consistent with proposals for recapitalizing the BIF advanced by both the Administration and the Congressional Budget Office.

First, S. 543 gives the FDIC, on behalf of the BIF, access to substantial amounts of working capital. Working capital enables the FDIC to finance the assets of failed banks pending their resale. S. 543 allows the BIF to borrow up to $45 billion in working capital from the Federal Financing Bank.[11] S. 543 contemplates that the FDIC will repay its borrowings for working capital from the proceeds of its sales of failed bank assets. If asset sales do not raise enough money, S. 543 requires the FDIC to repay the shortfall through loss borrowings, and ultimately through assessments on insured banks.

In addition to expanding the BIF's access to working capital, S. 543 significantly expands the BIF's existing line of credit with the Treasury, from $5 billion to $30 billion. The bill contemplates that the FDIC would use its borrowings under this Treasury line of credit to finance permanent losses incurred by the BIF in protecting insured depositors at failed banks. Treasury borrowings would bear interest at Treasury rates and be repaid within 15 years. The banking industry would repay these borrowings through semiannual deposit insurance premium assessments.

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[10] Written Statement of Charles Bowsher before the Senate Banking Committee, 12-13 (March 7, 1991).

[11] In effect, S. 543 allows the BIF to borrow working capital in an amount equal to the lesser of $45 billion or the sum of (i) the BIF's cash balance, and (ii) 90% of the BIF's assets.

The savings and loan crisis has given rise to some understandable skepticism concerning the banking industry's ability to repay borrowings on behalf of the BIF. Several observers, in the media and elsewhere, have questioned whether allowing the BIF to borrow from the Treasury for deposit insurance losses does not open the door to an eventual taxpayer bailout of the BIF—if, for example, the Treasury must later forgive some portion of the BIF's borrowings.

Because of this skepticism, the Committee has taken care to elicit testimony on the question of the industry's ability to repay the Treasury loans. While all observers are understandably cautious in their projections, to date the Treasury, the FDIC, and the CBO all agree that the industry should be able to repay, through assessments over several years, any amount of borrowing up to the maximum authorized by S. 543. In its February, 1991, report on financial modernization, Treasury stated,

> [w]ith over $200 billion in equity and average annual after-tax earnings of roughly $18 billion during 1985–89, the banking system appears to have the capacity to finance a substantial, multi-year recapitalization [of the BIF]. [12]

S. 543 includes two important elements to minimize the risk to taxpayers associated with these borrowings.

First, S. 543 requires that repayment of Treasury borrowings receive top priority from the FDIC in its allocation of income from assessments on BIF members.

Second, S. 543 requires the FDIC to promulgate a schedule for rebuilding the BIF to the 1.25 percent designated reserve ratio. So long as BIF reserves remain insufficient to cover demands on the BIF as they arise, taxpayers will be at risk. Accordingly, S. 543 encourages the FDIC to begin rebuilding the BIF by restricting the FDIC's discretion to delay recapitalization. Although the Committee recognizes that the FDIC must avoid assessment rates that would have significant adverse consequences for the banking industry, the Corporation should also consider and work to diminish the abiding risk to the taxpayer that exists when a federally-guaranteed insurance fund is insolvent or nearly insolvent.

To rebuild the Fund so it can absorb future losses, S. 543 requires the FDIC to take one of two actions whenever a deposit insurance fund's reserves fall short of the designated 1.25 percent reserve ratio—as the BIF's reserves do today. The FDIC must either assess a premium sufficient to restore the fund to the designated ratio within 1 year, or adopt a schedule for rebuilding the fund to the designated ratio within a period that may be as short as two years or as long as fifteen, depending on how far short of the designated reserve ratio the fund may be. Any rebuilding schedule must specify target reserve ratios at semiannual periods, culminating in the designated reserve ratio. S. 543 would require the Corporation to assess premiums so as to achieve the target reserve ratios established in the schedule.

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[12] "Modernizing the Financial System: Recommendations for Safer, More Competitive Banks," 78 (Department of the Treasury, February 1991).

The Committee Print provided for a maximum rebuilding period of 10 years, subject to extension by up to 3 years under certain circumstances. As reported, however, S. 543 sets a maximum period of 15 years. Should the FDIC require more than fifteen years, the bill would require the FDIC to return to Congress for authority to extend the period. The bill sets forth procedures for expedited Congressional consideration of any such extension request.

Although the Administration proposed establishing a maximum premium assessment of 30 basis points per annum for BIF members, neither the Committee Print nor the reported bill contain any such cap. Current CBO projections indicate that it should be possible to meet anticipated demands on the BIF and rebuild the BIF to the 1.25 percent level within 15 years without imposing premiums of 30 basis points or more. Nevertheless, should those projections prove too optimistic, S. 543 contemplates that the FDIC will have full discretion to impose higher premiums as needed to protect the deposit insurance fund and the taxpayers. Analyses by both the CBO and the GAO suggest that the banking industry could withstand premiums of more than 30 basis points, should it become necessary. Thus, CBO Director Reischauer told the Committee in January that "[w]e believe that a premium in the range of 30–40 cents per $100 of assessable deposits would not cause serious problems." On the other hand, the FDIC, the Federal Reserve, the Treasury and the banking industry argued that premiums at such unprecedented levels might have serious adverse consequences for the banks and the economy. In light of all the arguments, the Committee believes that the most prudent course is to restore the health of the BIF over time. While it is the Committee's hope that premiums will not have to rise above 30 basis points, the Committee is firm in its view that the 23 basis point premium rate now in effect should not be reduced until the BIF achieves its designated reserve ratio.

Some witnesses supported a premium cap on grounds that it would help to lure new capital into the banking industry, but there is little evidence to support this argument. Although deposit insurance premium rates have nearly tripled since 1989, and previous caps on premium assessments were removed by the Omnibus Budget Reconciliation Act of 1990, no demonstrable reduction in the flow of new equity capital into the banking industry has occurred.[13]

S. 543 leaves intact the FDIC's existing authority to increase the designated reserve ratio above 1.25 percent if the Corporation determines that circumstances warrant a higher reserve ratio.

In summary, title I of S. 543 gives the FDIC adequate resources and adequate time to handle losses expected in the next two years and restore the BIF to health. At the same time, it provides substantial taxpayer protection by reaffirming the banking industry's responsibility to cover the costs of deposit insurance for banks, requiring the creation of a definite timetable for rebuilding the BIF's reserves, and establishing that repayment of any FDIC borrowing from the Treasury should get first priority in the FDIC's expenditure of income from assessments on BIF members.

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[13] Data supplied to the Committee by the Federal Reserve Board and the Securities Data Corporation indicate that new capital has recently been entering the banking industry in record amounts. Banks raised $3.73 billion in new equity in 1987; $1.23 billion in 1988; $3.2 billion in 1989; $1.8 billion in 1990; but $4.13 billion through just the first five months of 1991.

C. RHODE ISLAND EMERGENCY GUARANTEE

Title I also includes a provision easing the difficulties encountered in Rhode Island following the failure of Rhode Island Share and Deposit Indemnity Corporation, a private deposit insurer, in January 1991. The Governor of Rhode Island closed 10 state-chartered banks and 35 state-chartered credit unions that had been insured by the failed carrier. The collapse of this insurer affected a larger proportion of households in a state than any similar failure in the past: nearly one out of three Rhode Island citizens had deposits in the affected institutions. Although most of the institutions closed have since been reopened, 13 of the largest institutions remain closed. The state also established a Depositors Economic Protection Corporation (the "Corporation") to borrow money to repay the depositors. The borrowing will be repaid by sales of assets of failed institutions.

This crisis came at a particularly troubled time for Rhode Island, which is suffering from the recession that continues to dampen economic prospects in New England. The state's budget has already been severely tested by the effects of the recession. To lower the cost to the State of Rhode Island in repaying these depositors, title I authorizes the Secretary of the Treasury to guarantee repayment of up to $180 million in borrowing by the Corporation. The State of Rhode Island or the Corporation must request a guarantee in writing. The Secretary may guarantee only Corporation borrowing that occurs within 1 year after the date of enactment of this Act. The borrowing must mature within 10 years and must be scheduled to be repaid in equal installments of principal during the last 5 years of its repayment term.

No guarantee may be made unless the amount of the borrowing for which the guarantee is requested is fully secured by a grant by the Corporation to the United States of a secured first mortgage lien in sufficient performing assets held by the Corporation and all proceeds from the sales of such assets. The appraised market value of such pledged collateral must be at least 2.5 times the principal amount of the borrowing at the time of the borrowing. If Rhode Island uses the full $180 million in guarantees, it must pledge $450 million in collateral. The borrowing must also be secured by a pledge by the Corporation of any revenue from the Rhode Island sales tax dedicated to the Corporation in excess of the amount necessary to pay principal and interest on any obligation already issued by Rhode Island or the Corporation to repay depositors. The Secretary will assess and collect from the Corporation a guarantee fee at least annually. The guarantee fee will be computed daily at a rate at least one-half of one percent per year on the outstanding principal amount of borrowing guaranteed. If Rhode Island uses the full $180 million in guarantees, it will pay the Federal government over $7 million in 10 years.

The Secretary may guarantee borrowing by the Corporation only if the Director of the Office of Management and Budget determines that the guarantee has no net cost to the United States Government. This section is subject to the Balanced Budget and Emergency Deficit Control Act of 1985, as amended by the Budget Enforcement Act of 1990.

In further response to this situation, title II contains a provision requiring depository institutions that are not federally insured to disclose that fact to their customers. The institutions must receive a written acknowledgement from their customers that they realize their deposits are not federally insured before the institutions may accept any deposits. This will protect consumers from confusion and unintended risk.

TITLE II—DEPOSIT INSURANCE REFORM

The Committee is concerned that, without reform of the deposit insurance system and the bank regulatory system, deposit insurance losses will continue to mount. Accordingly, title II makes fundamental changes in the way banks are regulated. These changes will force regulators to take prompt corrective action when an institution first experiences trouble and enable regulators to take control of failing institutions before they run up losses to the insurance fund. The bill establishes a risk-based deposit insurance assessment system and sharply restricts the costly too-big-to-fail policy. It also eliminates many abuses of the deposit insurance system. The Committee believes these changes will reduce the cost of bank failures and minimize the losses to the insurance fund. With the FDIC in need of a loan from the Treasury to cover the cost of resolving bank failures, reducing the cost of those failures is the best possible protection for the taxpayers.

A. PROMPT CORRECTIVE ACTION

1. Need for Prompt Corrective Action

The Committee is concerned that regulators have too often delayed in resolving the problems of troubled institutions. Numerous witnesses before the Committee identified such delay as a significant factor in the problems of both the thrift and commercial banking industries and recommended adoption of legislation to encourage prompt corrective action. Robert Reischauer, Director of the Congressional Budget Office ("CBO"), was one such witness. In testimony before the Committee on September 12, 1990, he said:

> [B]oth the FDIC and the Congress can affect significantly the losses that will have to be covered by the Bank Insurance Fund. The Fund only incurs losses if institutions are closed after the real value of their assets is less than their liabilities. If systems are in place to monitor closely the financial condition of banks, and to trigger closure or mandatory disciplinary actions before significant losses occur, the Fund's liabilities will be minimized.

Similarly, the General Accounting Office ("GAO") has reported that thrift regulators' failure promptly to close troubled institutions encouraged the owners and managers of those institutions to take greater risks: once their equity was wiped out, they had nothing to lose and everything to win by gambling with insured deposits. U.S. General Accounting Office, *Deposit Insurance: A Strategy for Reform*, No. GGD-91-26, (March 1991) ("GAO Deposit Insurance Report"). And the problem is not limited to thrifts. The GAO also reviewed the examination histories of five large banking organizations that failed in 1988 and 1989 and found in each case that "regulators identified unsafe practices but did not use formal enforcement tools to remedy them." *Id.*, 44. The banks engaged in unsafe practices, including aggressive loan growth and improper dividends, even after the examiners had identified significant asset deterioration. *Id.*, 45.

To address this problem, S. 543 institutes a new regulatory system of "prompt corrective action." The overriding purpose of the new system is to resolve the problems of troubled institutions with no loss or minimal loss to the deposit insurance fund.

The prompt corrective action system will require regulators to act at the first sign of trouble. As an institution's financial condition declines, regulators must take meaningful measures to restore the institution to health, culminating in appointing a conservator or receiver to the institution if it ultimately proves impossible to turn it around through less drastic measures. This system will help shift the costs of failures toward the shareholders of troubled institutions, away from the deposit insurance system and the taxpayers.

Numerous witnesses before the Committee endorsed the concept of requiring prompt corrective action to recapitalize or resolve failing institutions. These witnesses included not only CBO Director Reischauer and Comptroller General Bowsher, but also Treasury Secretary Brady, Federal Reserve Board Chairman Greenspan, SEC Chairman Breeden, and several academic experts. Secretary Brady stated on February 26, 1991:

> [T]he failure to take prompt corrective action in the past allowed some institutions to fail when they could have been saved, and fostered low capital levels that create incentives for firms to take excessive risk.

FDIC Chairman Seidman testified on April 23, 1991:

> In accord with the Administration, Chairman Riegle and others, the FDIC supports the concept of early intervention in undercapitalized institutions before they become technically insolvent. It should be understood clearly by bankers that federal deposit insurance is provided in exchange for the maintenance of certain standards of safety and soundness.

2. Capital-Based Safeguards

a. Capital as a tripwire

i. Importance of capital

S. 543 instructs regulators to use a depository institution's capital level to determine when regulatory action is needed. "Capital" is the equity built up or contributed by an institution's owners. This equity forms a buffer between bank losses and the deposit insurance system. Witnesses from the Administration, the CBO and academia agreed that adequate capital levels are an essential protection for the insurance fund because a depository institution's incentive to act prudently and invest wisely rises with the amount of equity its shareholders have at risk in the institution. Secretary of the Treasury Brady told the Committee on February 26, 1991:

> Capital is the single most important protection. It puts the shareholders' own money at risk and thus provides incentives to invest prudently. And it acts as a buffer that absorbs losses ahead of the deposit insurance fund.

Experience with both banks and thrifts indicates that an institution's level of capital is a strong, objective indicator of an institution in trouble. As banking expert Robert Litan told the Committee on March 12, 1991, "there certainly is a strong statistical basis for supervising weakly capitalized banks more intensively than their stronger brethren." A recent study prepared for the House Banking Committee by Mr. Litan and banking experts James R. Barth and R. Dan Brumbaugh, Jr. demonstrated that weakly capitalized banks in 1986 to 1988 were far more likely to fail than well capitalized banks.[1] Banks with capital in excess of 6 percent of assets had a three-year failure rate of only 2 percent. For banks with capital ratios between 3 and 6 percent, the failure rate is eight times higher, or 16 percent. For banks with capital ratios between 1.5 and 3 percent, the failure rate is still higher, fully 37 percent. *Id.*, 59. In testimony before this Committee on January 29, 1991, the CBO projected that a whopping two-thirds of banks whose capital ratios were between 1.5 percent and 3 percent as of June 30, 1990, would fail by the end of 1993. The better capitalized an institution is, the longer the period of time regulators will have to assess problems and resolve them.

ii. Capital categories under the bill

Under S. 543, as under current practice, regulators will set two capital standards for federally insured depository institutions: a "leverage limit," which measures an institution's capital as a percentage of its total assets (not adjusted for risk); and a "risk-based capital requirement," which measures the institution's capital as a percentage of its risk-adjusted assets. (Current law also requires thrifts to meet a "tangible capital requirement.") Regulators have some discretion to set additional capital standards or delete standards.

Institutions will then be classified, according to their capital, into five categories: well capitalized, adequately capitalized, undercapitalized, significantly undercapitalized, and critically undercapitalized. Well capitalized institutions have capital significantly exceeding the minimum level for all capital standards. Adequately capitalized institutions meet all capital standards. (The bill's prompt corrective action section imposes no restrictions on well capitalized or adequately capitalized institutions—other than that they not pay such large dividends or management fees that they become undercapitalized. But being well capitalized or adequately capitalized is significant for other purposes, such as interstate branching under title III of the bill and affiliation with a securities underwriter under title VII.) An institution is undercapitalized if it fails to meet any of the capital standards, and significantly undercapitalized if its capital is significantly below any of those standards. An institution is critically undercapitalized if its capital falls below a further level set by the regulators—the critical capital level. Regulators will set that level at not less than 2 percent of an institution's total assets, nor more than 65 percent of the minimum leverage limit.

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[1] "Banking Industry in Turmoil: A Report on the Condition of the U.S. Banking Industry and the Bank Insurance Fund," Committee Print 101-8, 101st Cong. 2nd Sess. (1990).

The five categories, by their terms, overlap to some extent. Thus, a significantly undercapitalized institution is necessarily undercapitalized because it fails to meet at least one capital standard. Similarly, a well capitalized institution, is necessarily adequately capitalized because it meets all capital standards.

b. Safeguards on undercapitalized institutions

i. Undercapitalized institutions

S. 543 places important restrictions on undercapitalized institutions. First, an institution cannot pay dividends to shareholders or management fees to affiliates if it would be undercapitalized after making the payment. This protects the insurance fund by preventing institutions from depleting their capital for the benefit of their shareholders.

When an institution's capital level declines, the institution's ability to bear its own losses diminishes and the risk that losses will fall on the insurance fund or the taxpayers increases. The Committee believes that such institutions should endeavor to rebuild their capital and thus their economic resiliency. Accordingly, S. 543 prevents the owners of undercapitalized institution from depleting the remaining capital of such institutions through the payment of dividends. The GAO noted four large undercapitalized banks that paid dividends to their holding companies in excess of their incomes. Id., 45.

Second, the undercapitalized institution must submit a capital restoration plan to its primary Federal regulator, explaining how the institution will rebuild its capital without appreciably increasing its risks. The plan must include specific year-by-year capital targets and describe the activities in which the institution will engage. The plan must be based on realistic assumptions and not appreciably increase the risks to which the institution is exposed. Any corporate parent must guarantee compliance with the plan, and provide appropriate assurances of performance. The guarantee requirement will induce the parent company to decide promptly whether to recapitalize the institution, sell it, or stand behind it until it recovers. The parent company's liability on the guarantee is, however, limited to 5 percent of the institution's total assets at the time the institution became undercapitalized. If there are 2 or more parent companies, their aggregate liability is limited to 5 percent.

Third, the institution's growth will be limited. Regulators may allow growth if the institution has an approved capital restoration plan, the growth is consistent with the plan, and the institution's capital (as measured by its owners' tangible equity) is increasing at a rate sufficient to restore the institution's capital within a reasonable time. The Committee is concerned by reports that, too often, weak or even insolvent banks and thrifts have been allowed to try to outgrow their troubles. National Bank of Washington, for example, increased its size by 30 percent, and its real estate loans by 110 percent, after being cited for deficiencies. Id., 49. The Bank of New England grew from $7.5 billion in assets in 1985 to $32.6 billion in 1989 before failing at an expected cost to the FDIC of $2.3 billion. S. 543 will prevent desperation lending by requiring asset growth to be well capitalized. An undercapitalized institution will thus be encouraged to lend wisely as well as to seek new capital.

Fourth, the institution will need prior regulatory approval for acquisitions, branching, and new lines of business—which can be approved only if they further the achievement of the capital restoration plan.

ii. Significantly undercapitalized institutions

S. 543 requires regulators to take additional corrective measure if an institution becomes significantly undercapitalized, or if an undercapitalized institution fails to submit and implement a capital restoration plan.

Next, the institution's primary Federal regulator must normally take the following three steps:

Require the institution to recapitalize by issuing stock or subordinated debt.

Restrict transactions with affiliated institutions, to prevent abuse. Specifically, the institution may not avail itself of the interbank exemption to section 23A the Federal Reserve Act, which exempts transactions with commonly controlled institutions from the quantitative limits in section 23A.

Restrict the interest rates the institution pays on new and rollover deposits to the prevailing rate of interest in the region.

Each of these steps is mandatory unless the regulator determines the step would not further the purpose of resolving the institution's problems with no loss or minimal loss to the insurance fund.

In addition, regulators may:

Further restrict the institution's asset growth or require it to reduce its total assets.

Restrict any activities that pose excessive risk to the insurance fund.

Require the institution to replace its directors or senior executive officers.

Require the institution to replace its independent auditor. A new auditor could help expose any concealed problems. (Regulators should not exercise this authority so as to create disincentives for auditors to be vigilant in uncovering problems and calling for the recognition of losses.)

Require any parent bank holding company to obtain regulatory approval before paying dividends.

Require divestiture of the institution or a troubled affiliate posing a significant risk to the institution.

Require the institution to take any action that would be more effective than the steps listed above in resolving the institution's problems with no loss or minimal loss to the deposit insurance fund.

The institution's ability to give bonuses and pay raises to its senior executives is restricted. The Committee believes a troubled institution's managers should not use the institution's capital for self-enrichment.

These measures are remedial; they are carefully designed to constrain the activities of troubled institutions so as to minimize the risk that they will cause losses to the insurance fund.

iii. Critically undercapitalized institutions

Should an undercapitalized institution continue to decline, despite the measures described above, to the point at which the institution is critically undercapitalized, S. 543 authorizes the following steps to avoid or minimize losses to the insurance fund.

First, without FDIC approval, the institution cannot make payments on any subordinated debt beginning 30 days after becoming critically undercapitalized. The Committee believes this restriction will help preserve remaining capital for the fund and the taxpayers. Subordinated debt holders of a troubled institution should not stand in line ahead of the insurance fund and the taxpayers. Subordinated debt outstanding on July 15, 1991 will be exempt from this provision until July 15, 1996.

Second, S. 543 requires that the regulator of any critically undercapitalized institution scrutinize and approve any large or potentially abusive transactions in which the institution engages. Without prior regulatory approval, the institution may not enter into any material transactions such as investments or acquisitions other than in the ordinary course of business, extend credit for any highly leveraged transaction, make any material change in accounting methods, engage in any covered transaction under section 23A, or increase its weighted average cost of funds.

Third, within 30 days, the institution's primary Federal regulator must appoint a conservator or receiver for the institution, or (with the FDIC's concurrence) take alternative action more likely to protect the fund. This requirement provides an important protection for the insurance fund and the taxpayers by encouraging regulators to close a failing institution while it can still absorb its own losses. S. 543 allows an ample period for implementing this requirement. Within 30 days after an institution becomes critically undercapitalized, the appropriate Federal banking agency must appoint a receiver, appoint a conservator, or take other action that would better protect the deposit insurance fund. If the regulator finds that another action would better protect the fund, the regulator may take that action subject to the requirement that its effectiveness be reviewed every 90 days.

After one year, receivership is generally mandatory if the institution remains critically undercapitalized. Even then, however, there is an exception: the regulator need not appoint a receiver if the institution has significant operating earnings and is at 80 percent of its critical capital level. The Committee believes these receivership provisions for critically undercapitalized institutions will help prevent failures, by giving viable institutions a strong incentive to remain above the critical capital level in order to avoid conservatorship or receivership.

3. Noncapital Tripwires

S. 543 gives regulators flexibility to discipline institutions based on criteria other than capital. This will help reduce deposit insurance losses caused by unsafe and unsound practices.

a. More stringent treatment based on other supervisory criteria

If an institution's primary Federal regulator determines that an institution is in an unsafe or unsound condition or engaging in an unsafe or unsound practice, S. 543 permits the agency to downgrade the institution by one capital level. Thus, a well capitalized institution may be treated as adequately capitalized; an adequately capitalized institution as undercapitalized; and an undercapitalized institution as significantly undercapitalized. The regulator may require the institution to submit a plan specifying how it will correct the unsafe or unsound condition or practice. Regulators may also downgrade an institution if the institution's most recent examination report rates the institution's assets, management, earnings, or liquidity as less than satisfactory (for example, as a 3, 4, or 5 on the regulators' current 5-point scale). Regulators thus may discipline an institution that presents a danger to the insurance fund by virtue of a factor other than its capital level.

b. Standards for safety and soundness

S. 543 further directs each Federal banking agency to establish operational and managerial standards for insured depository institutions and their holding companies, including standards relating to internal controls, information systems and internal audit systems; loan documentation; credit underwriting; interest rate exposure; and asset growth. Each agency must also establish standards governing asset quality, earnings and valuations, including a maximum ratio of classified loans to capital; a minimum earnings sufficient to absorb losses without impairing capital; and a minimum ratio of market value to book value of shares. Regulators shall require an institution that fails to meet any standard to submit a plan for correcting the deficiency, generally within 30 days of receiving notice of the failure from the agency. Until the deficiency is corrected, the agency shall prohibit or restrict the institution's asset growth, restrict the interest rate it pays on deposits, or require it to increase capital.

4. Related Reforms

In addition to the prompt corrective action mechanism described above, title II includes the following improvements to promote efficient regulation of insured institutions.

a. Improved capital standards

Because capital is so important to the success of the prompt corrective action system, title II requires Federal bank regulators to review their capital standards biennially to ensure they take adequate account of various types of risk. In addition, title II directs the Federal banking regulators to consider interest-rate risk, concentration of credit risk, and the risks of nontraditional activities in setting revised risk-based capital standards. Revised risk-based capital standards must be prescribed no later than 18 months after enactment of this bill; the regulators are given discretion to establish a reasonable phase-in period for the revised standards.

b. Accounting reform

The thrift crisis and the problems of the banking industry demonstrate clearly the need for review of the accounting principles applicable to depository institutions. A recent study of 39 failed banks by the GAO concluded that the banks' "call reports did not provide regulators with advanced warning of the true magnitude of the deterioration in the banks' financial condition." U.S. General Accounting Office, Failed Banks: Accounting and Auditing Reforms Urgently Needed, No. AFMD-91-43, April 1991 at 5. The report found that the banks' accounting failed to include an additional $7.3 billion in reserves relating to the diminished value of their assets. "A major portion of the $7.3 billion deterioration in asset values was not previously reported because deficiencies in GAAP allowed bank management to unduly delay the recognition of losses and mask the need for early regulatory intervention that could have minimized losses" to the insurance fund. *Id.*

Because the prompt corrective action approach relies heavily on an institution's capital level as a trigger for regulatory action, the Committee believes that capital levels must be determined as accurately as possible. S. 543 therefore directs the Federal Financial Institutions Coordination Council established by title IV, in consultation with the SEC, to develop accounting principles that will achieve two goals. First, the accounting principles for insured depository institutions should accurately reflect their economic condition. The bill neither requires nor precludes the use of mark-to-market accounting, although the Committee is aware that the application of mark-to-market principles to many classes of depository institution assets may be problematic. Second, the accounting principles should facilitate effective supervision of such institutions.

Title II further requires the Federal banking agencies to prescribe accounting principles for insured depository institutions that are at least as conservative as generally accepted accounting principles, and authorizes the prescription of accounting principles more conservative than GAAP to facilitate prompt corrective action. These provisions will enable regulators to make appropriate improvements in the accounting principles applicable to insured depository institutions, while foreclosing the manipulation of those principles as an instrument of forbearance. The Committee does not wish to create a set of regulatory accounting principles (RAP) that are inconsistent with GAAP for general purpose financial statements. The Federal Financial Institutions Coordination Council may wish to consider establishing its accounting principles in the form of additional disclosures for use in reports required to be filed with the Federal banking agencies.

c. Annual on-site examinations

To help ensure that regulators have up-to-date information in order to make decisions and protect the insurance fund, title II generally requires regulators to conduct annual, full-scope, on-site examinations of all FDIC-insured institutions. The Committee understands the term "full-scope" to include, among other things, a review of the institution's internal controls.

Title II makes two exceptions to the annual examination requirement. First, Federal regulators may rely on State examinations of State institutions in alternate years. Second, small, well capitalized, well managed banks could be examined once every 18 months rather than once a year.

Federal Reserve Board Chairman Alan Greenspan endorsed the annual on-site examination requirement in testimony before the Committee, stating on July 12, 1990 that:

> Where it is not already the practice, full in-bank supervisory review—focusing on asset portfolios and off balance sheet commitments—should occur at least annually, and the results of such examinations should be used to evaluate the adequacy of the bank's capital.

d. Management controls

The GAO's April, 1991, study of 39 failed banks concluded that "internal control weaknesses continue to be a significant cause of bank failures." Of the 39 banks, "33 had serious internal control problems which regulators cited as contributing significantly to their failure. Had these problems been corrected, the banks might not have failed or their failure could have been less expensive to the Fund." The GAO recommended a number of improvements in the reporting requirements and internal control procedures for insured institutions.

The Committee believes that regulators must have the information they need if prompt corrective action is to succeed. Accordingly, at the markup, Senator Wirth proposed, and the Committee adopted, an amendment incorporating a number of the GAO's recommendations.

As amended, title II requires each insured depository institution to submit an annual report to its regulators including (1) financial statements; (2) a statement of management's responsibility for preparing financial statements, maintaining internal controls, and complying with designated safety-and-soundness laws; and (3) an assessment of both the effectiveness of the institution's internal controls and the institution's compliance with designated safety and soundness laws. The FDIC and the appropriate Federal banking agency may require the inclusion of additional information in the annual report as necessary to assess the institution's financial condition and management. Title II sets forth specific requirements for the institution's independent public accountant concerning audits and attestations of certain segments of the institution's annual report.

With respect to the assertions of management to be contained in the annual report, title II requires that the institution's independent public accountant to attest to these assertions, in accordance with generally accepted standards for attestation engagements.

With respect to the financial statements included in the annual report, title II directs the FDIC to promulgate regulations requiring each insured depository institution to have an annual independent audit of its financial statements in accordance with generally accepted auditing standards. The independent public accountant must determine whether the statements are presented fairly in accordance with generally accepted accounting principles and comply with such other disclosure requirements as the FDIC and the institution's Federal regulator may prescribe. In the case of banks that are subsidiaries of bank holding companies, these requirements may be satisfied by an audit of the holding company without considering an audit of each financial institution subsidiary.

With respect to management's assertions regarding compliance with designated safety and soundness laws, title II will require independent public accountants to apply procedures agreed upon with the FDIC to determine the extent of compliance by any insured depository institution or holding company. Any attestation to assertions required of the independent public accountant by the Corporation shall be in accordance with generally accepted standards for attestation engagements. The FDIC, in consultation with the appropriate Federal banking agencies, shall objectively determine the laws and regulations on which insured depository institutions and their independent public accountants shall report.

Title II further requires each insured depository institution to establish an independent audit committee to review the annual reports and audits with management and the independent public accountant. The committee must consist of independent members of the institution's board of directors. The FDIC may designate certain institutions "large" institutions, and title II sets forth special provisions for the composition of the audit committees of institutions so designated. In addition, the FDIC may require the independent public accountant for any such large institution to review the institution's quarterly financial reports in accordance with procedures agreed upon with the FDIC. The independent public accountant must report to the audit committee on any such quarterly reviews and provide copies of any such reports to the FDIC and any appropriate Federal or State regulator.

Title II includes standards for the qualification of independent public accountants for insured depository institutions performing audits required by the amendment. Specifically, such accountants must agree to provide, upon request, any related working papers, policies and procedures to the FDIC and any appropriate Federal or State regulator, and must have received a peer review that conforms to guidelines acceptable to the FDIC. The FDIC and the appropriate Federal banking agency may remove, bar or suspend any independent public accountant from performing these audit services upon a showing of good cause.

Title II also specifies certain requirements for the exchange of information between insured depository institutions, their independent public accountants, and their regulators. Specifically, each institution must provide its auditor with a copy of the institution's most recent reports of condition and examination, as well as with copies of any memorandum of understanding or written agreement in effect between the institution and any appropriate Federal or State banking agency and a report of any enforcement actions taken or civil money-penalty assessed against the institution (or in the case of a civil money penalty, against any institution-affiliate party) by the FDIC or the institution's Federal or State regulator during the period covered by the audit. Depository institutions must also provide the FDIC and the institution's Federal or State regulator with a copy of every audit report, including any qualification to the report and any management letter, within 15 days after its receipt from the institution's auditor. Finally, institutions must notify their regulators whenever they dismiss their independent auditor or engage a new auditor.

Title II has two features designed to ease the burden these requirements might otherwise impose on small and medium-size banks. First, insured depository institutions whose assets do not exceed $150,000,000 at the beginning of its fiscal year are completely exempted from these requirements. The FDIC is authorized to increase, but not lower, the threshold asset level for this exemption.

Second, title II permits any institution that is a subsidiary of a holding company to satisfy these requirements—other than the requirement for annual, audited financial statements—if comparable reporting and auditing is performed at the holding company level and either the institution's total assets are less than $5 billion, or the institution's total assets are at least $5 billion and less than $9 billion and the institution has a CAMEL rating of 1 or 2.

The Committee believes these measures will bolster the safety and soundness of America's financial institutions. As a complement to the prompt corrective action system described above, they will help ensure that the management, or independent auditors, of insured financial institutions promptly identify and bring to regulatory attention any financial difficulties or violations of proper banking procedures.

e. Conservatorship and receivership reforms

To facilitate prompt corrective action, title II would reform regulators' authority to appoint conservators and receivers. Specifically, title II would permit the appointment of a conservator or receiver if an undercapitalized institution failed to submit and implement a required capital restoration plan; could not or would not recapitalize by selling stock or subordinated debt; or was critically undercapitalized. The FDIC would have independent authority to appoint conservators and receivers when necessary to protect the insurance fund. Title II also broadens the grounds for appointing receivers for national banks—making them consistent with those for other FDIC-insured institutions.

f. Back-up enforcement authority of FDIC

Title II gives the FDIC the same back-up enforcement authority for banks that it enjoys for savings associations as a result of FIRREA. Specifically, title II provides that the FDIC may recommend that a Federal banking agency take an enforcement action with respect to an institution or its affiliated parties. If the agency fails to take the action within 60 days, the FDIC may take the action itself. The Committee anticipates that this provision will help protect the insurance funds because, as the deposit insurer, the FDIC has a strong incentive to see that actions necessary for the protection of those funds are taken.

g. Consent to be bound by Federal Deposit Insurance Act

The bill specifies that depository institutions that become or remain FDIC-insured consent to be bound by the Federal Deposit Insurance Act and other Federal safety and soundness statutes. This makes clear that accepting the benefits of Federal deposit insurance entails accepting the safeguards Congress has enacted to protect the insurance funds.

h. Review required when deposit insurance fund incurs material loss

Whenever a deposit insurance fund incurs a material loss with respect to an insured depository institution after July 1, 1993, title II requires the inspector general of the institution's primary Federal regulator to prepare, within six months, a written report on the agency's supervision of the institution. The report must ascertain why the institution's problems resulted in a material loss and make recommendations for preventing such losses in the future. The GAO will review and verify the accuracy of these reports. The Committee envisions that this investigation and review procedure will promote sound management of the bank regulatory agencies by encouraging the agencies to learn from their mistakes, thereby reducing the cost of bank failures and protecting the taxpayers.

For purposes of this provision, a loss is considered material if it exceeds the greater of $25 million or a percent of the institution's total assets at the time the FDIC initiated assistance or a receiver was appointed. The percent of total assets is determined by a transition provision, scaling down to 2 percent of assets after June 30, 1997.

B. ENDING THE TOO-BIG-TO-FAIL POLICY

S. 543 restricts application of the FDIC's too-big-to-fail policy, which uses FDIC funds to protect uninsured deposits. The Committee is concerned that this policy treats depositors in different institutions inequitably, diminishes incentives for some banks to act prudently, and gives an unfair competitive advantage to large banks. Eliminating this policy will reduce the strains imposed on the insurance fund, protecting the loan to the FDIC from the taxpayers.

1. The Too-Big-to-Fail Problem

In common usage, the term "too-big-to-fail" can designate either of two distinct policies. In its original sense, the term describes a regulatory determination that certain large banks should never be allowed to fail because of the risk their failure might pose to the entire financial system. This policy came to the fore with the Continental Illinois rescue in 1984. In that case, the FDIC protected all of the bank's depositors, although 90 percent of Continental Illinois's deposits were either above the $100,000 limit or held in uninsured overseas accounts. The insurance fund lost approximately $1 billion as a result of the Continental Illinois failure. The decision in early 1991 to protect all depositors in the failure of Bank of New England appears to be a more recent example of the application of this too-big-to-fail policy.

Second, more generally, the term "too-big-to-fail" is used to describe a policy under which the FDIC has routinely paid off or otherwise protected uninsured depositors in resolving even small or medium-sized bank failures. Banking analyst Bert Ely estimates that the FDIC paid 95 percent of all uninsured deposits in the 1,009 banks that failed from 1985 to 1990. Cranford, Are "Too Big To Fail" Banks Too Much for Congress, Cong. Quarterly, May 11, 1991 at 1174. Deposits at foreign branches of some small and medium-size banks, notably the National Bank of Washington, have effectively been brought under the FDIC's protection through the application of the "too-big-to-fail" policy in this broader sense—even though the bank did not pay insurance premiums to cover the cost of that protection.

The FDIC itself acknowledges that it has expanded the scope of deposit insurance to cover foreign deposits. In a September 25, 1990, letter to the Independent Bankers Association of America, the FDIC explained that it had paid off $37 million in deposits at the Nassau, Bahamas, branch of the National Bank of Washington. The FDIC reasoned that since a few money center banks have large amounts of foreign deposits, all foreign deposits of all banks must be covered to avoid confusion in the international markets.

Although the FDIC maintains that the cost of protecting uninsured depositors since 1985 has added just $832 million to the FDIC's liabilities, the Committee is concerned that the policy discriminates against smaller institutions. Few small institutions have foreign deposits, yet all are assessed deposit insurance premiums that may be used to pay off or otherwise protect the uninsured depositors of large banks. While the FDIC paid off the offshore depositors of the National Bank of Washington, no such payment was forthcoming for uninsured depositors at the Freedom National Bank in Harlem, which had no foreign branches. When that community bank failed, uninsured depositors, including nonprofit organizations, were unprotected.

The too-big-to-fail approach has been roundly criticized even by its ostensible beneficiaries—the nation's largest financial institutions. The chief executive officer of Chase Manhattan Bank, Thomas Labrecque, told the Committee on April 3, 1990:

> We must eliminate the * * * "too big to fail" policy under which the very largest banks are given de facto 100

> percent protection of all deposits. Such a policy is inconsistent with the original intent of deposit insurance and is unfair to smaller banks, but big bankers neither want it nor need it.

Federal Reserve Board Chairman Alan Greenspan agreed on July 12, 1990, that "no bank should assume that its scale insulates it from market discipline."

Uninsured depositors who recognize they are at some risk of loss in the event that their bank fails are likely to be more cautious than depositors who believe they will be protected in any eventuality. On March 5, 1991, CBO Director Reischauer summarized for the Committee the lower levels of risk likely to result by ending too-big-to-fail:

> [C]arrying out a policy whereby no institution is considered to be "too-big-to-fail" or "too-big-to-liquidate" would result in lower costs to the deposit insurance system over the long run, if not in every individual case. If the uninsured creditors of depositories know that regardless of the size of their institutions, they stand to lose some or all of their investment if the institution is taken over by the deposit insurer, they are likely to exercise more market discipline and institutions are likely to behave more prudently.

The Committee is also concerned that the too-big-to-fail policy has increased the liabilities of the deposit insurance system. By eliminating incentives for large depositors to evaluate the financial condition of their banks, too-big-to-fail encourages large deposits to flow to large institutions regardless of their underlying soundness. Rather than covering only insured deposits, the Federal safety net in effect now covers all deposits. Until too-big-to-fail is abandoned, the insurance fund faces an excessive level of risk.

2. Measures to Address the Too-Big-to-Fail Problem

S. 543 addresses the too-big-to-fail problem in several ways. First, the prompt corrective action system described above requires bank regulators to act before an institution is in imminent danger of failing at the expense of the deposit insurance system. Second, S. 543 requires the FDIC to follow the least cost resolution approach to resolving failed depository institutions. The bill provides a narrow systemic risk exception for those rare instances in which the failure of an institution could threaten the entire financial system. Third, the bill limits the likelihood of such a systemic risk by limiting banks' credit and other exposure to one another. Finally, title II restricts the Federal Reserve Board's ability to keep failing institutions afloat through discount window advances.

Least-Cost Resolution—Title II of S. 543 would establish a categorical rule that, in resolving failed institutions, the FDIC must in all cases employ the strategy that causes the least possible long-term cost to the insurance fund. (Under current law the FDIC need only pursue a strategy that costs less than liquidation.) The FDIC may not pay off insured deposits, pay additional claimants, form or charter new banks, provide assistance to an insured institution, expend money from an insurance fund or assume any liability unless the actions are taken pursuant to a least cost strategy. Title II further requires the FDIC to evaluate alternative resolution strategies on a present-value basis using a realistic discount rate, and to document its reasoning in choosing a particular strategy. In evaluating a resolution strategy with respect to an institution, the FDIC should consider whether that strategy may increase the likelihood of competing institutions failing at a loss to the insurance fund.

Title II makes an exception to the general least-cost rule for cases in which the failure of an insured depository institution poses a genuine risk to the financial system. Witnesses advised the Committee that regulators must have flexibility to respond to such a unique case. Federal Reserve Board Chairman Alan Greenspan told the Committee on April 23, 1991 that:

> Despite * * * substantial concerns, the Board, like the Treasury, has reluctantly concluded that there may be circumstances in which all of the depositors of failing institutions will have to be protected in the interests of macroeconomic stability.

Under title II, the Treasury may advance funds to pursue a resolution strategy other than the least cost strategy if the Federal Reserve and the Treasury both agree on the need for such action. The Federal Reserve Board must approve the action by a two-thirds vote, while the Secretary of the Treasury must consult with the President. Any costs incurred by the insurance fund as a result of using this exception would be repaid by a special assessment on total bank assets, less tangible equity, subordinated debt and foreign deposits.

Limiting interbank liabilities—Current law permits insured depository institutions to extend credit representing significant portions of their capital to one another. Such interbank transactions create the possibility that the failure of one institution can imperil other institutions—a form of systemic risk.

To limit such risk, S. 543 requires the Federal Reserve Board, the agency most familiar with the overall state of the payments system, to devise limits on the amount a bank may lend to or deposit with other banks. This provision does not affect the Federal Reserve banks' authority to lend to institutions experiencing liquidity problems.

Reducing risk to payment system—Financial institutions engage in thousands of transactions daily with other financial institutions, both directly and through clearing organizations. Efficient processing of these transactions is important to the smooth functioning of the nation's economy. These transactions can be processed most efficiently by "netting" obligations among financial institutions. Under a netting contract between two institutions, an institution must pay only its net obligation with respect to covered contractual payment obligations. Similarly, an institution's right to receive payments is limited to its net entitlement under the contract. A failed institution receives its net entitlement. A netting contract may also cover the members of a clearing organization.

To increase the effectiveness of these arrangements, title II provides that no provision of Federal or State law and no stay, injunction, or similar order of a court or agency shall delay or limit application of the netting provisions of an enforceable netting contract.

Safeguards on Federal Reserve discount window advances—The Committee is concerned that extended discount window advances to troubled institutions may in some instances facilitate the protection of uninsured depositors at the expense of the deposit insurance system. A recent study by the House Banking Committee found that 377 insured institutions received extended credit lending from the discount window within 3 years of failure. House Comm. on Banking, Finance and Urban Affairs, *An Analysis of Federal Reserve Discount Window Loans to Failed Institutions*, June 11, 1991. It is not a question of whether institutions receiving extended credit will fail, but when. Of the 418 institutions that received extended credit from the Federal Reserve from 1985 to 1991, fully 90 percent subsequently failed. *Id.* 320 institutions were borrowing at the time they failed. *Id.* The House Banking Committee study concluded that:

> when a nonviable or insolvent depository institution receives open-ended extensions of credit at the discount window in order to remain open long beyond the point of viability * * * the Federal Reserve is effectively increasing the cost of ultimately resolving the institution.

Discount window advances remove incentives for depositors with large balances to evaluate their bank's health. By keeping a troubled institution afloat, discount window advances give uninsured depositors time to withdraw their deposits from the bank. In effect, Federal Reserve loans finance the withdrawal of the uninsured deposits. The failure of First Republic Bank of Texas illustrates the problem. This bank, with $16 billion in assets, borrowed $3 billion from the Federal Reserve a few months before it failed. Quarterly call reports reveal that during the period in which the Federal Reserve's loan was outstanding, foreign depositors withdrew $1 billion. Insured deposits continued to flow into the bank during this period, increasing the exposure of the insurance fund.

When uninsured depositors have time to withdraw their money before an institution fails, the loss they would have shared shifts to the insurance fund. This is because the Federal Reserve's loans are secured by the institution's best assets, leaving the FDIC with fewer good assets available with which to pay off depositors. An American Bankers Association analysis indicates that Federal Reserve lending to doomed institutions may have cost the FDIC up to $1.5 billion over the past four years.

The practice of making discount window advances to failing institutions stands in some tension with the prompt corrective action approach, which seeks to resolve troubled institutions before they cause losses to the insurance fund. The Federal Reserve acknowledged during the Committee's markup on August 2, 1991 that its lending practices to troubled institutions would need to be conformed to the prompt corrective action approach embodied in the bill.

The Federal Reserve's discount window lending practices have been subject to criticism. Former FDIC Chairman William Isaac wrote to Chairman Gonzalez on June 14, 1991, that fully secured advances from the Federal Reserve System

> erode marketplace discipline by enabling banks to obtain funding beyond what their financial condition warrants. They greatly increase the losses to the federal deposit insurance system by allowing banks to replace deposits covered by a limited federal guarantee with liabilities that are fully protected.
>
> I believe strongly that * * * borrowings from the Federal Reserve System should share the same risk of loss as payments made by the FDIC to protect insured basis. * * * I am firmly convinced this will greatly reduce the cost of bank failures.

Banking experts Robert Litan and Catherine England wrote the Committee on July 25, 1991, to express their support for "legislation to close the so called Federal Reserve 'too-big-to-fail loophole'." They advocated that "[i]f the Federal Reserve chooses to lend to a significantly undercapitalized institution, the risk of loss in the event of failure should be borne by the Federal Reserve—it should not be passed on to the FDIC."

Resolving this problem is very difficult. The Committee is sensitive to the fact that the Federal Reserve's discount window plays an important role in maintaining the stability of the banking industry. Extensions of credit such as overnight advances to viable banks meet banks' temporary liquidity needs and keep the financial system running.

S. 543 provides that advances by a Federal Reserve bank to an undercapitalized institution may not be outstanding for more than 60 days in any 120-day period. The advances may be extended for additional 60-day periods if the institution's primary Federal regulator or the Chairman of the Federal Reserve Board certifies in writing that the institution's capital exceeds the critical capital level and the institution is not expected to become critically undercapitalized or to be placed in conservatorship or receivership. If a Federal Reserve bank makes increased advances to an institution 5 days after it becomes critically undercapitalized, the Federal Reserve must bear a portion of any increased cost to the FDIC of liquidating the institution. The Federal Reserve's liability is limited to the lesser of the amount it would have lost had its increased advances been unsecured or the interest it received on the increased advances.

Some have argued that making the Federal Reserve pay for a portion of losses caused to the FDIC by a discount window advance is inconsistent with protecting taxpayers because the Federal Reserve turns over its profits to the Treasury while the FDIC is funded by assessments on the banking industry. This argument ignores, however, the fact that the FDIC is virtually insolvent as a result of losses caused in part by the too-big-to-fail policy. The Administration has requested a $70 billion loan for the FDIC in order for it to handle continuing bank failures. For the duration of that loan, at least, taxpayers are best protected by the policy that pro-duces the fewest bank failures at the least possible costs. By eliminating the discount window loophole, title II will resolve troubled banks more quickly and with less loss to the insurance fund. The taxpayers face far more risk when the Federal safety net is infinite in scope than they do when FDIC coverage is limited to insured deposits. Making uninsured depositors and other creditors pay their share of the costs of a failure is the surest protection for the taxpayers.

Special Assessment to Recover Losses on Foreign Deposits—Although foreign deposits are not insured by the FDIC and foreign depositors are not included in the assessment base, the FDIC has regularly protected foreign depositors when resolving failed institutions. Such coverage of foreign deposits has added considerably to the Bank Insurance Fund's losses. Nine banks with foreign deposits and total assets of more than $200 million each failed between January 1, 1985 and July 20, 1991. The total amount of foreign deposits of these banks at the call dates immediately preceding their failures was approximately $1.5 billion. Applying the loss rate on all assets at those institutions to the foreign deposits yields at least $185 million in losses to the insurance fund that were attributable to foreign deposits. As discussed above, however, regulatory policies such as the Federal Reserve discount window advances allow foreign deposits to leave a failing institution before it it is finally closed. A broader estimate of losses attributable to these foreign deposits may be calculated by applying the loss rate to the amount of foreign deposits the banks had one year before it failed. This approach suggests the loss to the insurance fund was approximately $550 million.

Title II ends the practice whereby institutions holding foreign deposits receive, in effect, full insurance coverage for such deposits even though they pay no insurance premiums on them. Title II provides that any time an insured institution with foreign deposits causes a loss to an insurance fund, a special assessment will be made on all foreign deposits held by members of that fund. The assessment will raise an amount equal to the total loss incurred by the fund with respect to that institution's foreign deposits. This assessment will be made whenever an institution with foreign deposits fails, even if the foreign deposits are not protected. In such situations the assessment will recover a portion of the losses described above that the FDIC has already sustained by protecting foreign deposits.

C. RESTRICTING RISKY PRACTICES

1. The Need for Action

The Committee is concerned that the existence of Federal deposit insurance may, in some cases, give States an incentive to gamble at Federal expense. At the request of Chairman Riegle, the FDIC, together with the Conference of State Bank Examiners, reviewed the powers each State had granted to its State-chartered banks. This survey indicates 42 States now allow their banks to engage as principals in activities not permitted for national banks. These activities include securities underwriting and equity ownership, real estate ownership and development, insurance underwriting, or some combination of those activities. (These activities should not be confused with less risky agency powers in securities, real estate and insurance, which can be exercised in varying combinations by State banks in 47 States.) None of these States, of course, insure these riskier activities; they continue to rely on the FDIC. As of December 31, 1990, six of the 42 States had given their State banks authority to pursue all three types of risky activity. Only 2 States require that these risky activities be carried out in separately capitalized subsidiaries. In at least 40 States, therefore, federally-insured deposits are directly funding risky activities.

State banks have not hesitated to use these new powers. A 1991 survey by the Conference of State Bank Supervisors found that 428 State banks are actively using their State equity investment powers. The survey indicates that banks in nine States have an average of 10 percent or more of tier 1 capital invested in equity investments. Florida banks, for example, have over half a billion dollars invested in equity ownership. This represents 8 percent of their assets and 33 percent of their capital. The CSBS survey further disclosed that in 5 States banks have an average of 10 percent or more of capital invested in real estate. California banks, for example, had approximately half a billion dollars invested in real estate development, representing 12.7 percent of capital. California banks had an additional $238 million invested in real estate participations. Through call reports the FDIC has identified 88 State banks that have more than 25 percent of their capital invested in real estate. The FDIC compared the CAMEL ratings for these 88 banks to those for banks in general and concluded that the 88 banks had a "much riskier profile than the universe of banks." It should be noted that the Federal Reserve has expressed the belief that "call report information may badly underestimate the extent of this activity."

In the savings and loan crisis, risky State activities created big losses for the Federal deposit insurance system. States that gave their thrifts the most extensive powers, California and Texas, experienced the highest and most costly rates of thrift failure. Cleaning up failed State thrifts in these two States alone cost the Federal government fully 70 percent of its clean-up expenditures in 1987 and 1988. Congress addressed this problem in FIRREA by generally limiting State-chartered thrifts to activities permitted for federally-chartered thrifts.

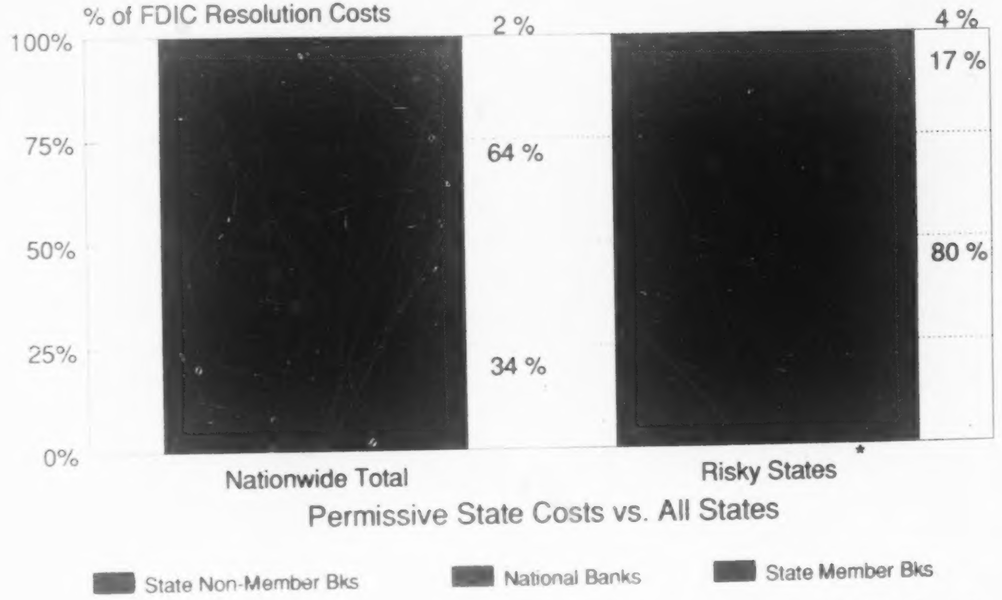
The Committee believes there is a need for similar limits on State-chartered banks—especially, State-chartered banks that are not members of the Federal Reserve system ("State non-member banks"). The ability of national banks to engage in risky activities is already quite limited under Federal statute, and the Federal Reserve restricts State-chartered banks that are members of the Federal Reserve system ("State member banks") to activities allowed for national banks. State nonmember banks are thus the only banks able to engage in such risky activities. As Figure A shows, State nonmember banks accounted for just 34 percent of all bank resolution costs incurred by the FDIC from 1985 to 1990 on a nationwide basis.

In States that have granted banks two or three additional powers in securities, real estate, or insurance, the statistics are quite different. Figure B identifies the States allowing banks two or three additional powers. Figure A shows that in those States, resolution of State nonmember bank failures has accounted for fully 80 percent of all Bank Insurance Fund expenditures.

Further evidence of the risk presented to the insurance fund by risky State-approved activities is provided by data showing that State nonmember banks, which can exercise their additional State powers, have higher failure and cost-of-resolution rates than State member banks, which cannot. In States granting 2 or 3 additional powers, State nonmember banks have failed at higher and more costly rates than their more constrained national bank and State member bank counterparts. Failures of State nonmember banks have already cost the FDIC $7.4 billion over the past 6 years. The potential scope of this problem is enormous: State nonmember banks have assets of over $1 trillion, approximately 30 percent of all bank assets in the United States.

Figure A

Percentage of Resolution Costs
By Type Of Charter
1985 - 1990

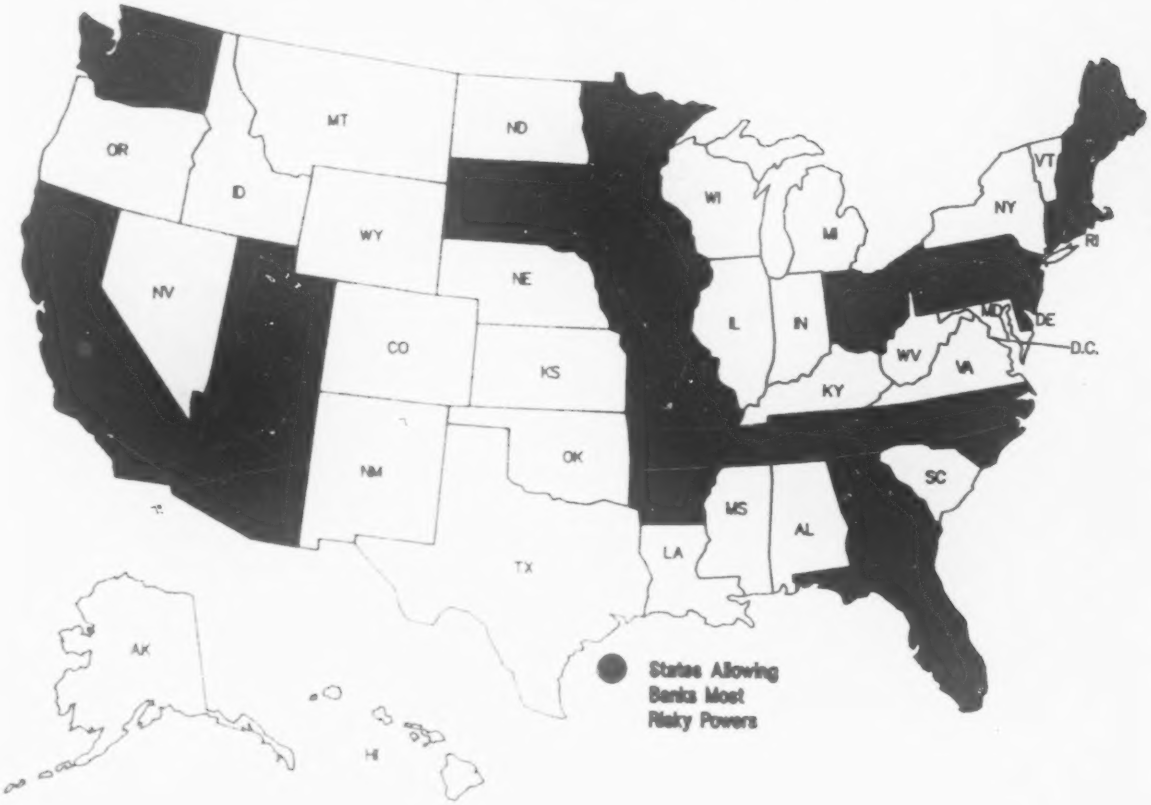


* States allowing banks 2 or 3 nontraditional powers in securities, insurance and real estate

Source: Staff analysis of FDIC data

Figure 3

Risky Bank Activities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D.C.
CO
KS
WV
VA
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SC
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● States Allowing Banks Most Risky Powers

2. Restricting Risky State-authorized Activities

Because States have allowed their banks to risk federally-insured deposits in speculative ventures, some Federal restrictions on the activities of such banks are needed. In February, 1990, the FDIC reported to Chairman Riegle that it was drafting regulations to limit the activities of insured State institutions. Eighteen months later, no regulations have been issued. The Committee believes that restrictions are needed to ensure that State banks are run safely and soundly.

Title II will impose strict limits on the ability of State-chartered banks to engage in activities impermissible for national banks. Specifically, title II will permit a State bank to engage in an activity that is not permissible for a national bank only if the State bank is adequately capitalized and the FDIC concludes that the activity poses no significant risk to the insurance fund and is an appropriate use of insured deposits. This rule will apply to all activities in which a bank acts as principal—i.e., not as its customer's agent. In the context of the rule, "significant risk" relates not to the relative or absolute size of potential losses to the insurance fund if the institution engages in the activity, but to the likelihood that permitting the institution to conduct the activity may result in any loss to the fund.

Title II will permit a well capitalized State-chartered bank to engage as principal in an activity not permissible for a national bank if it files a notice with the FDIC describing the activity and the FDIC does not disapprove of the proposed activity within 90 days. The FDIC may forbid the bank from engaging in the activity if it determines the activity would pose a significant risk of loss to the insurance fund, or would be inconsistent with the purposes of Federal deposit insurance. In addition to the general rule restricting all activities in which a State bank engages as principal, title II contains two specific prohibitions. First, a State bank may not acquire or retain any equity investment not permissible for national banks. There are exceptions to that prohibition for community development investments, investments made through separately capitalized subsidiaries, and investments related to risk-retention and savings bank life insurance. Impermissible equity investments must be divested by August 1, 1996. Second, title II prohibits State banks from acquiring corporate debt securities not of investment grade. Institutions retaining such junk bonds in their portfolios must carry them as if they were held for sale, which under generally accepted accounting principles means that they must be carried at fair market value.

S. 543 allows for a gradual phase-out of investments in corporate equity securities and securities indices from the portfolios of State-chartered banks. During the three-year period beginning two years after enactment of this bill, each State-chartered bank must reduce by at least one-third each year any corporate equity investments not permitted for national banks. For seven years following enactment of this bill, an insured State-chartered bank may acquire or retain any investment in any publicly-traded index of corporate equity securities to the extent permitted by its State law on May 14, 1991.

The Committee believes these provisions strike an appropriate balance between protecting the Bank Insurance Fund and preserving State regulation of State institutions.

3. Restricting Bank Activities

The bill authorizes the FDIC to restrict any bank activity that poses a significant risk to the BIF. The FDIC can prohibit the activity, require that it be conducted through a subsidiary (including a separately capitalized subsidiary), or impose any other restrictions or requirements the FDIC determines are necessary to protect the insurance fund. This broad grant of authority applies to national banks as well as State banks.

4. Safeguards Against Insider Abuse

The Committee has been concerned by reports of serious abuses by bank and thrift insiders, with resultant costs to the deposit insurance system. In one recent case, the failure of Madison National Bank, the Office of the Comptroller of the Currency found that bank insiders received improper loans in excess of legal lending limits, amounting to over 80% of the bank's troubled assets. In another case, the GAO has reported to the Committee that a group of insiders borrowed $227 million from the Bank of New England. Of that amount some $185 million are now considered troubled assets.

The Committee is concerned that such self-dealing poses unnecessary risks to the deposit insurance system and diminishes public confidence in the banking industry. To help combat such abuses, title II provides a number of important safeguards. Title II places an overall limit on the amount a depository institution may lend to its directors, senior executive officers and major shareholders. Such loans may not exceed the bank's unimpaired capital and surplus. The Federal Reserve Board may allow a member bank with assets of less than $100 million to make such loans up to twice its unimpaired capital and surplus in order to avoid constricting credit in small communities. Title II tightens restrictions on loans to directors by bringing them within the loans to one borrower provision. It prohibits insiders from knowingly accepting impermissible loans. It also limits the size of loans by thrifts and State nonmember banks to their senior executive officers, bringing such institutions in line with Federal Reserve member banks. Preferential loans by thrifts to insiders through correspondent institutions are prohibited.

5. Protections Against Abusive Transactions with Affiliates

Transactions between an institution and its affiliates can also cause losses to the deposit insurance fund. Title II addresses this risk through a number of provisions strengthening the current restrictions on transactions with affiliates contained in sections 23A and 23B of the Federal Reserve Act. Section 23A currently provides that the aggregate amount of covered transactions between an insured depository institution and any affiliate may not exceed 10 percent of the institution's capital stock and surplus. Title II would require a bank holding company to provide the Federal regulators with prior notice of any single transaction that exceeds 5 percent of the institution's capital and surplus. Section 23A's definition of "affiliate" is broadened, for example to include a commodity pool for which the member bank serves as commodity trading adviser, while the definition of "covered transaction" is expanded to include the assumption by a member bank of any liability of an affiliate. These changes should reduce the possibility that transactions between a bank and its affiliates could pose a risk to the BIF.

6. Real-Estate Lending Standards

S. 543 instructs each Federal banking agency to prescribe regulations containing standards for extensions of credit secured by interests in real estate or for construction or real estate development. The standards shall take note of the risk posed to the insurance funds by such loans and the need for safe and sound operation of insured institutions. If the regulators do not adopt regulations within 9 months of enactment of this bill, certain loan-to-value restrictions for real estate lending set forth in the statute will become effective.

D. RISK-BASED ASSESSMENTS

1. Flat-Rate Assessments Encourage Risk-Taking

Under current law, the FDIC passes the cost of providing deposit insurance on to insured banks and thrifts through a semi-annual assessment system. Every insured bank and thrift pays an assessment equal to a simple percentage—currently 0.23 percent—of its domestic deposits. This flat-rate assessment system takes no account of whether a particular institution represents a high risk or a low risk to the insurance fund.

The flat-rate premium system creates two problems. First, it unfairly penalizes safe institutions, as they in effect subsidize their less conservative competitors. While individuals at high risk of having an accident generally pay more for their insurance than individuals at lower risk, banks and thrifts at high risk of suffering major loan losses pay the same insurance rates as their lower-risk competitors.

Second, the system gives depository institutions no incentive to be cautious: no matter how they use the taxpayer-insured deposits, the rates stay the same. As banking analyst Bert Ely told the Banking Committee on May 12, 1990, "the drunk drivers of the banking and thrift world pay no more for deposit insurance than do their sober siblings."

2. Risk-Based Assessments

In order to encourage banks to behave responsibly, title II of S. 543 instructs the FDIC to develop and institute a system risk-based deposit insurance premiums. Comptroller General Bowsher noted the advantages of a risk-based system in his March 7, 1991, appearance before the Committee, stating that "[b]y varying premiums according to risk, the burden on well capitalized, well managed banks of financing resolutions of failed banks will be reduced and transferred to those that put BIF at greatest risk." A system of risk-based premiums will also provide an incentive for bank owners and managers to run their institutions soundly so as to reduce their premiums.

S. 543 gives the FDIC discretion in designing the risk-based premiums system. FDIC Chairman Seidman strongly supported this approach in his testimony before the Committee on April 23, 1991:

> The Treasury Department proposal mandates that the FDIC institute a specific type of risk-based premium system within two years. The FDIC believes it is not a good idea to specifically legislate a particular approach to risk-based premiums since it is vital to maintain flexibility to alter the system, based upon experience and changed circumstances. Thus, the FDIC supports Senator Riegle's approach to risk-based premiums, which gives the FDIC the authority to design a risk-based premium system that will accomplish the goal of assessing institutions based upon the risk that each such institution poses to its insurance fund.

This discretion allows the FDIC to consider all risks posed by an institution, including risks from its assets, insured deposits, foreign deposits and off-balance-sheet liabilities. To ensure that legal vestiges of the current deposit insurance system do not unnecessarily constrain the FDIC's discretion, S. 543 repeals provisions of current law defining the "assessment base." The bill does not specify maximum or minimum assessments, and does not tie assessments rates to an institution's capital levels.

The Committee anticipates that the FDIC will exercise its discretion under this provision to devise a system that is fair, administrable, and that relates premium levels to risk as accurately as is feasible. It is not necessary that risk be measured with actuarial fairness. As CBO Director Reischauer testified on March 5, 1991, "regulators share a widespread misconception that, for risk-related premiums to be effective, risk must be measured perfectly. That is by no means the case, as can be readily seen by considering some of the extremely crude risk proxies and categories private insurers employ."

3. Private Reinsurance

Title II also authorizes the FDIC to establish a 3-year pilot program for assessing the viability of using a reinsurance system to assist in setting risk-based assessment rates. This provision reflects the considerable effort of Senator Dixon.

A system of private reinsurance could transfer some of the exposure of insuring deposits from the FDIC, and implicitly the taxpayers, to the private sector. Under such a system, the FDIC and the full faith and credit of the United States would continue to stand behind all insured deposits. The obligation of reinsurers would be to the FDIC, not to depositors directly.

Under the pilot program, the FDIC will obtain private reinsurance for up to 10 percent of the insured risks posed by up to 50 bank holding companies with aggregate assets of at least $1 billion each. The reinsurers must meet appropriate criteria established by the FDIC, including capital standards that guarantee the reinsurer will be able to pay claims when necessary.

Upon termination of the pilot program, the FDIC may implement a nation-wide reinsurance system if it determines that such a system would be practical for insured institutions. The FDIC must further determine the private reinsurers can measure risk effectively, that the reinsurers' financial health can be monitored adequately, and that implementation of a reinsurance system is in the public interest. The national reinsurance system would cover up to 10 percent of the insured risk of failure for institutions with assets over $1 billion and institutions owned by holding companies with total assets over $1 billion. Such institutions would negotiate directly with eligible reinsurers to establish the reinsurance premium. The reinsurer may also insure deposits that are not federally insured. All agreements negotiated would be subject to FDIC approval.

After the FDIC determines that a sufficient number of institutions are covered by reinsurance and that the assessments charged by the reinsurers differentiate risk at least as well as the statutory risk-based assessment system, each institution shall pay an assessment determined by applying the premium rate established by the reinsurer to the institution's average assessment base. The FDIC will establish a timetable providing an opportunity for a competitive reinsurance market to develop and for all qualified institutions to obtain reinsurance.

E. LIMITING DEPOSIT INSURANCE COVERAGE

Although the Committee recognizes the need to protect the deposit insurance system by contracting the scope of the Federal safety net, it believes that such contractions should be as minimally disruptive as possible.

1. Eliminating Coverage of Bank Insurance Contracts

While S. 543 largely leaves in place current "pass-through" deposit insurance coverage for deposits of certain tax-deferred retirement plans, as well as certain other special forms of accounts (such as attorney trust accounts), it generally eliminates insurance coverage of bank investment contracts ("BICs"). The Committee believes this restriction will eliminate an important source of risk to the deposit insurance system.

Generally, BICs are an investment product offered by insured depository institutions to institutional investors who manage pension funds. Like certificates of deposit purchased by such institutional investors, BICs typically enjoy "pass-through" insurance coverage, by virtue of which the interest of each beneficiary of a pension plan BIC investment is separately insured up to $100,000. The Federal Reserve estimates that the volume of BIC's outstanding at the end of 1990 was $10.4 billion. GAO Deposit Insurance Report at 167.

In comparison to certificates of deposits, however, BICs have one of two distinct characteristics. First, a "window" feature allows pension fund managers to make deposits at any time during a specified period. Second, a "benefit response" feature allows funds to be withdrawn without penalty to meet the depositor's obligation to pay benefits to plan participants. These characteristics make BICs riskier than traditional certificates of deposit. Contributions to a BIC-financed plan and benefit-responsive withdrawals can both vary depending on a number of variables beyond the control of the issuing institution, such as layoffs and new hiring. These concerns are heightened during a period of volatility in interest rates, in which changes in the attractiveness of the BIC relative to other investments can result in unexpectedly large deposits. An undercapitalized institution could use the issuance of BICs as a means of rapid growth.

To correct this situation, S. 543 generally eliminates pass-through coverage for BICs. Other deposits made by certain tax-deferred retirement plans would still be insured, up to $100,000 per participant.

2. Restrictions on Brokered Deposits

Misuse of brokered deposits played a large part in the collapse of the savings and loan industry: they allowed troubled weak thrifts to increase their assets rapidly and drove up the interest rates thrifts paid their depositors. Because their deposits were insured, investors had no incentive to be concerned about the soundness of the institutions and the institutions had no incentive to act prudently.

In order to prevent the abuses of brokered deposits that exacerbated the thrift crisis from recurring, title II restricts the use of brokered deposits to the healthiest institutions. Only well capitalized institutions with CAMEL ratings of 1 or 2 may accept funds obtained through a deposit broker. The FDIC may allow adequately capitalized institutions to accept brokered deposits for successive periods of up to 90 days. Title II also prohibits undercapitalized institutions from offering rates of interest on insured deposits that significantly exceed the prevailing rate in their normal market areas or in the market area in which the deposits would otherwise be accepted. The bill does not define "significantly" in this context, but the Committee anticipates that the FDIC will carefully scrutinize rates on deposits exceeding 10.5 percent of current rates on U.S. Treasury obligations of comparable maturity.

F. OTHER REFORMS

1. Cross-Guarantee Liability

Under current law, an FDIC-insured institution is liable for any losses incurred by the FDIC in connection with the failure of an affiliated insured institution under common control. Thus, a corporate parent may not from conduct a shell game to transfer assets from a failing institution to a healthy institution.

S. 543 extends this liability to the corporate parent of an insured institution. A company that controls an insured institution that fails will be liable for up to 5 percent of the assets of the failed institution. The controlling company will not be able to transfer assets to avoid the cross-guarantee provisions. For one year preceding the failure, any transfer of assets by a controlling company to an affiliate outside the scope of the cross-guarantee will be presumed to be an attempt to evade this liability, unless the transaction satisfies the standards of section 23B of the Federal Reserve Act.

The Committee believes it is appropriate to turn to an insured institution's parent company as a source of strength when the institution fails. A parent company that has benefitted from Federal deposit insurance protections of its depository institution subsidiary should absorb losses incurred by that institution before they are passed on to the taxpayer. The Committee Print would also have extended cross-guarantee liability to the non-depository affiliates of a failed institution. A compromise adopted during the markup struck this feature of the Print, leaving only the controlling company and its depository institution affiliates liable. The same amendment preserved current law providing that, in enforcing cross-guarantee liability, the FDIC will stand in line behind all other creditors. The Committee Print would have given the FDIC a priority over creditors.

2. Improved Disclosure by Depository Institutions and Federal Regulators

To carry out their responsibilities, the Committee believes that banking regulators must have full information about the institutions they supervise. Title II requires that banks with assets of over $1 billion provide certain additional information in the quarterly reports of condition they already file with Federal regulators. The additional disclosures include market value estimates of assets, liabilities, and net worth, disaggregated reports of assets, nonbanking activities, and major shareholders. These will provide more specific information to regulators so that banks' financial conditions can be better monitored.

In order for Congress to monitor the financial condition of the banking industry more accurately, each Federal banking agency must report to Congress annually on likely failures of depository institutions, the cost to the insurance funds of such failures, the capital levels of institutions, the involvement of insured depository institutions in nonbanking activities, and enforcement actions taken. The GAO and the CBO will review each agency's estimate of the number of institutions to fail and the cost of those failures. The bill permits the CBO to obtain CAMEL ratings of institutions and lists of troubled institutions under strict confidentiality rules including criminal penalties for improper disclosure of information. This information, already available to the GAO, will better enable the CBO to estimate the future needs of the insurance funds and the RTC. The insurance funds must report annually on institution failures during the previous 12 months and provide two-year projections of problem institutions.

3. Early Resolution

The bill includes a sense-of-the-Senate resolution encouraging the Federal banking agencies to facilitate early resolution of troubled depository institutions whenever early resolution would have the least possible long-term cost to the deposit insurance fund, as required under the least-cost-resolution rules in section 220 of the bill.

4. Disclosure by Uninsured Depository Institutions

The Committee is concerned about recent incidents in Rhode Island and the District of Columbia in which depositors apparently were unaware that they were making deposits in institutions that were not federally insured. Title II requires depository institutions that are not federally insured to disclose that fact to their customers. The institutions must receive a written acknowledgement from their customers that their deposits are not federally insured. This will help protect consumers from any unintended investments in uninsured institutions.

TITLE III—INTERSTATE BANKING AND BRANCHING

Title III phases out current prohibitions on interstate affiliations and branching over a period of years. One year after the bill's enactment, an adequately capitalized, adequately managed bank holding company will be able to acquire a subsidiary bank in another state. Two years after enactment, such a bank holding company will be allowed to establish a subsidiary bank in another state. After three years, Title III will permit adequately capitalized, adequately managed banks to branch in any state that has not enacted legislation prohibiting interstate branching. Title III requires regulatory approval for each new branch, and adjusts the rating and evaluation mechanism of the Community Reinvestment Act to require analysis for each state or metropolitan area in which a bank operates. After three years, adequately capitalized, adequately managed foreign banks will enjoy the same branching rights permitted for national and state banks.

I. BACKGROUND

American banking history has been characterized by restrictions on both interstate and intrastate banking. Such restrictions have been based in part on concerns about inordinate concentrations of financial power and a desire to promote close relationships between bankers and borrowers and the development of local economies. They have resulted in a fragmented system of thousands of independently chartered banks that contrasts sharply with the highly concentrated banking systems of many European countries, Japan and Canada.

A. History of Interstate Branching

Before the Civil War, branch banking in the United States was limited, but apparently not controversial. The First Bank of the United States, which existed from 1792 to 1811, was headquartered in Philadelphia and maintained offices in eight other states. The Second Bank of the United States, which lasted from 1816 to 1836 and also operated out of Philadelphia, had as many as twenty-five other offices during its life. Most state banks established in this period were specially chartered by their state legislatures. Branching rights therefore frequently varied from bank to bank rather than from state to state.

The rise of "free banking" in the period immediately before the Civil War proved significant for the future of branch banking. Under "free banking," specific legislative chartering of a bank was not required. Anyone meeting specified requirements (such as initial capitalization and depositing funds with the chartering state) could obtain a charter. Free banks were for the most part chartered as unit banks, that is, they had no branches. In time these thousands of small unit bank owners became a lobby against branching by larger banks.

The national bank system, established during the Civil War, was comprised entirely of unit banks, although the National Bank Act of 1864 permitted state-chartered banks that converted to national charters to keep their branches.

In the early 1900's a number of states gave their state-chartered banks branching powers, thus conferring on such state banks a competitive advantage over national banks in the same markets. In the early 1920's, the Comptroller of the Currency attempted to redress this competitive imbalance by allowing national banks to branch but this action was struck down by the Supreme Court. *First National Bank in St. Louis v. State of Missouri,* 263 U.S. 640 (1924).

In response to the Supreme Court's decision, Congress passed the McFadden Act in 1927 (12 U.S.C. § 36). The Act authorized national banks to open a limited number of branches in their home states if the law of those states permitted banks chartered by them to do so.

Following the McFadden Act, anti-branching sentiment declined largely because the extensive bank failures of the late 1920's and early 1930's showed the weakness of unit banking and made intrastate branching attractive as a means of stabilizing the banking system. Between 1929 and 1939 the number of states prohibiting intrastate branches fell sharply while the number permitting statewide branching doubled. In the Banking Act of 1933, Congress liberalized the McFadden Act to permit national banks to branch throughout their home states to the extent that such states permitted their own banks to do so. Even as amended, however, the Act prohibits national banks and state banks that are members of the Federal Reserve system "state member bank") from branching across state lines, even if state banks are authorized to do so. 12 U.S.C. § 361(c) and 321.

Because the McFadden Act does not apply to state-chartered banks that are not members of the Federal Reserve system ("state non-member banks") such banks may currently establish interstate branch networks where state law permits. As of May, 1990, however, only four states—Nevada, Rhode Island, Utah, and Virginia—permitted interstate branching. Conference of State Bank Supervisors, *A Profile of State-Chartered Banking,* Washington, D.C. 13th ed., (1990).

In summary, current law completely precludes interstate branching for national banks and effectively precludes it for virtually all state-chartered banks.

B. History of Interstate Affiliations

In order to circumvent the branching restrictions imposed by Federal and State governments, many banks began to form bank holding companies in the 1930's and 1940's. The holding company device permitted affiliations between banks because a holding company could purchase banks in different localities both within and outside a state, thereby obtaining a rough equivalent to a branch bank even when branch banking per se was impermissible. The bank holding company structure did not provide all the efficiencies of branch banking, but it did permit banks to expand the geographic scope of their operations. By 1956, statewide and interstate expansion by some large multi-bank holding companies raised congressional concerns. These led to the enactment of Section 3(d) of the Bank Holding Company Act, known as the Douglas Amendment, which prohibits multi-state bank holding companies from acquiring a bank in another state unless the statute laws of the state in which the acquired bank is located expressly authorizes such an acquisition.

Exercising the option provided to them by the Douglas Amendment, the vast majority of states have decided to allow interstate banking through the bank holding company structure. According to the Conference of State Bank Supervisors, 48 states presently allow some form of interstate banking. Thirty-four of those states, including California, New York, and Texas, allow full nationwide interstate banking. Fourteen states in the South and Midwest allow regional interstate banking through regional compacts.[1] Only two states, Montana and Hawaii, do not permit out-of-state bank holding companies to own banks in their states. [Chart A summarizes the current state of the law in this area.] The Federal Reserve estimates that of the 942 bank holding companies in the United States that own more than one bank, 49 already own banks in more than one state. These 49 bank holding companies control assets of approximately $1 trillion, or one-third of the banking system's assets.

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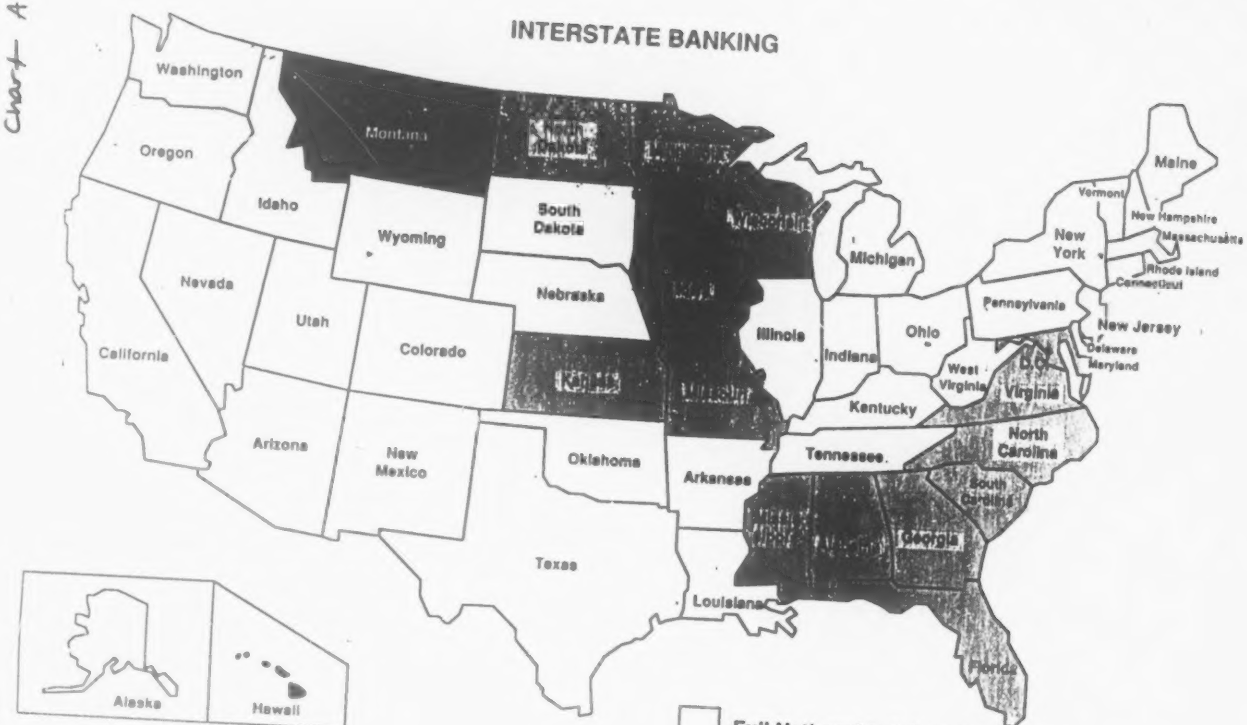
[1] The Supreme Court has upheld the validity of such agreements. *Northeast Bancorp, Inc. v. Board of Governors*, 105 S. Ct. 2545 (1985).

Chart A

INTERSTATE BANKING


Washington
Oregon
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North Dakota
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Oklahoma
Texas
Wisconsin
Michigan
Illinois
Indiana
Ohio
Missouri
Arkansas
Louisiana
Kentucky
Tennessee
Georgia
Florida
South Carolina
North Carolina
Virginia
West Virginia
D.C.
Maryland
Delaware
New Jersey
Pennsylvania
New York
Vermont
New Hampshire
Massachusetts
Rhode Island
Connecticut
Maine
Alaska
Hawaii

☐ Full Nationwide Interstate Banking

▨ Regional Interstate Banking

■ No Interstate Banking

ATTACHMENT

CONFERENCE OF STATE BANK SUPERVISORS

As of March 14 1991

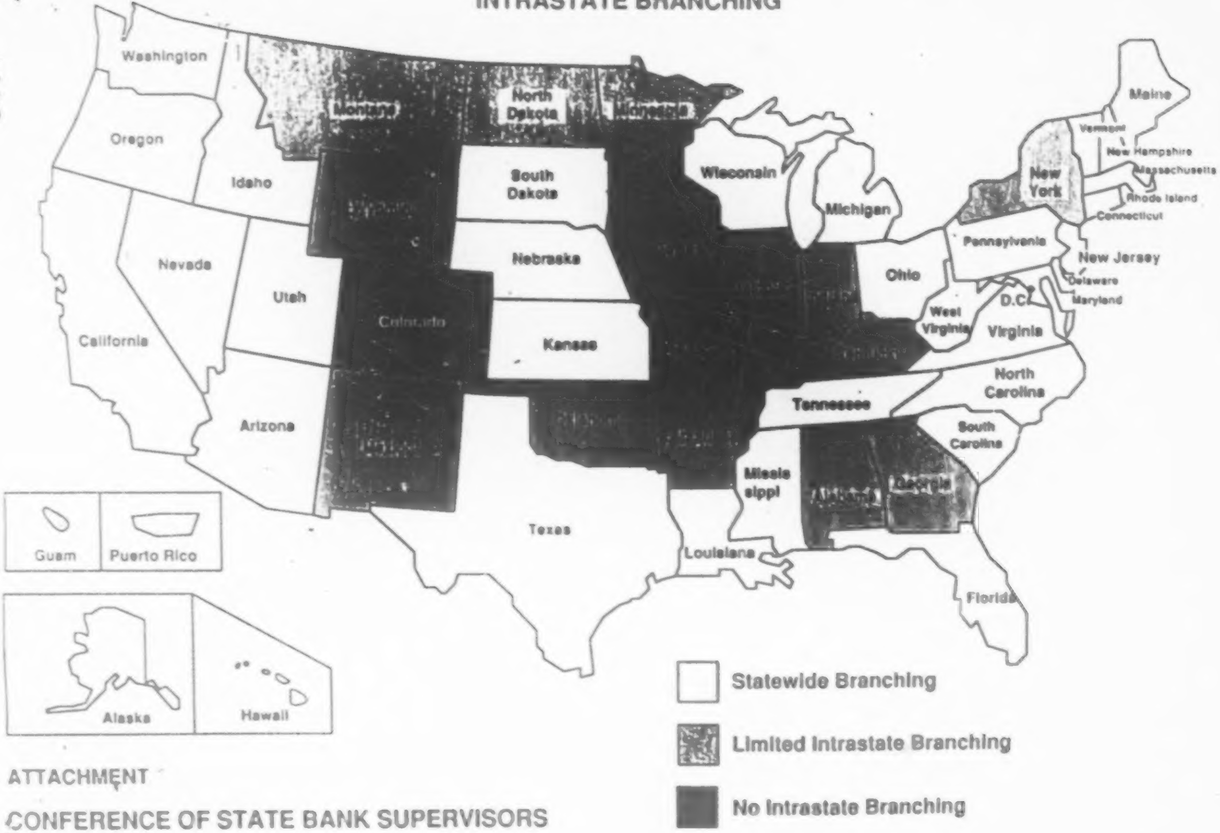
II. RESTRICTIONS ON INTERSTATE BANKING AND BRANCHING ARE NO LONGER APPROPRIATE

A. Interstate Branching

The McFadden Act's restrictions on interstate branching have been shown to be outdated by more modern state laws governing intrastate branching. States previously restricted intrastate branching also in the interest of preventing concentration of economic power and fostering close relationships between bankers and borrowers. In recent years, however, states have generally removed historical restrictions on intrastate bank branching. According to the Conference of State Bank Supervisors, as of March 14, 1991, 34 states have statewide branching, 15 states permit limited intrastate branching and only one state generally prohibits intrastate branching. [See Chart B which graphically depicts these facts.]

Chart B

INTRASTATE BRANCHING


Washington
Oregon
California
Idaho
Nevada
Utah
Arizona
Montana
North Dakota
Minnesota
South Dakota
Nebraska
Kansas
Colorado
Texas
Wisconsin
Michigan
Ohio
Louisiana
Missisippi
Alabama
Georgia
Tennessee
Florida
South Carolina
North Carolina
West Virginia
Virginia
D.C.
Maryland
Delaware
New Jersey
Pennsylvania
New York
Connecticut
Rhode Island
Massachusetts
New Hampshire
Vermont
Maine
Guam
Puerto Rico
Alaska
Hawaii
Statewide Branching
Limited Intrastate Branching
No Intrastate Branching

ATTACHMENT

CONFERENCE OF STATE BANK SUPERVISORS

Noting that expanded interstate branching allowed banks to diversify their risks and services, Comptroller General Bowsher testified in March that "further developments along these lines through elimination of restrictions on interstate branching could, on balance, be beneficial." The experience of the states that allow statewide branching is positive: large banks are able to expand their areas of operations and diversify their risks while small banks continue to fill an important niche in the marketplace. Former Deputy Treasury Secretary Robert Carswell recounted New York's experience for the Committee on March 20, 1991:

> Before New York removed its geographic branching restrictions and allowed any bank to branch anywhere in the state, there were predictions that independent banks would be driven to the wall and banking would be concentrated in the hands of a few large banks that would then squeeze and drain the local economies. It simply has not happened. Independent banks have done fine—providing services to old and new customers. The general level of services to consumers has improved, and prices are more uniform across the state. Some larger banks have been successful in establishing branches upstate; others have not.

As with intrastate banking, permitting interstate branching will allow banks to further diversify their asset portfolios. Interstate branching can help prevent failures like the Bank of New England, where a regional decline in real estate values helped topple a bank heavily concentrated in that area at a huge cost to the insurance fund. Former Deputy Treasury Secretary Robert Carswell told the Banking Committee on March 20, 1991, that bank failures in the 1980's were concentrated in states with limited branching rights. Texas and Oklahoma had the largest number of bank failures in the nation and had "among the most restrictive branching laws" Robert Litan, Senior Fellow at the Brookings Institution, told the Committee on March 12, 1991 that "it is no accident that in the 1980's most bank failures were concentrated in states with limited branching rights." He added that "the nation would have suffered fewer bank failures in the 1980's had we long ago permitted nationwide branching that would have spread many banking risks more evenly throughout the banking system."

Interstate branching should increase bank profitability by reducing administrative expenses for banks that presently operate interstate through separately chartered subsidiary banks of a bank holding company. Meaningful operating efficiencies can be achieved by eliminating many redundancies in multi-state banking organizations made necessary by current law. Converting subsidiary banks to branches will eliminate the need for separate capitalization of each bank, separate boards of directors, and separate examinations and audits for each banking unit. Individual back-office and computer systems run by each subsidiary bank could also be consolidated. This would allow banks to increase their capital, protecting the deposit insurance fund. By expanding the base of stable deposits, interstate branching will reduce the need for a bank to raise funds through brokered deposits or through national and international money markets.

Expanded branching will additionally promote entry into local markets, reducing concentration and increasing competition at the local level. This means greater convenience and lower costs to consumers. Bank customers could be better served by dealing with the same bank in different states. American society is very mobile; people move, travel, and conduct business across state lines. Allowing banks to branch interstate would simplify financial transactions. Relaxation of branching restrictions also will enable banks to offer their customers access to more convenient and expanded services.

Furthermore, technological advances in the decades since passage of the McFadden Act have transformed banking into an international industry. American banks are inhibited from competing with foreign banks in this market and abroad as a result of current restrictions. In a 1990 survey conducted by *American Banker*, no United States bank ranked among the 20 largest in the world. The largest American bank, Citicorp, ranked 21st. Just five years earlier, 3 United States banks were among the top 20. The globalization of the banking industry means that many United States banks cannot afford to continue to tie their success to a limited geographic area. They cannot match their competitors while burdened with costly subsidiary structures. Neither can they be strong global competitors without larger deposit bases in this country.

The restrictions on interstate branching are an American anomaly. The United States is the only industrial country that restricts bank branching. Indeed, by the end of 1992 European banks will be able to open branches across the Continent. Securities and Exchange Commission Chairman Richard Breeden recommends repeal of current restrictions on interstate branching. He noted at a July 19, 1991 hearing that:

> It will soon be possible for a German bank to open branches from Ireland to Greece and from Denmark to Spain, operating largely under the supervision of German authorities. At the same time it will remain unlawful for a California bank to open branches in Florida and Connecticut.

On July 31, 1990, FDIC Chairman Seidman told the Committee:

> The nation's archaic geographic banking restrictions will become even more obvious and unpalatable * * * as the European Community eliminates restrictions on branch banking. While European banks, and U.S. banking organizations with subsidiaries in Europe, make growth decisions based on market opportunities, banks operating in the United States will make growth decisions based to a large extent on what statutory loopholes can be found.

As Comptroller of the Currency Robert Clarke testified on April 23, 1991:

> Geographic restrictions on banking and branching may once have served a useful purpose in promoting the development of local economies, when commerce in those econo-

> mies relied more on local sources of funds. In today's integrated credit markets, however, local economies are no longer financially isolated, and geographic restrictions serve only to reduce competition, to the detriment of the consumers of banking products and services.

Outdated restrictions on interstate banking and branching expose our banking system to greater risks and thus threaten to increase losses to the Bank Insurance Fund and the taxpayers who stand behind it.

B. Interstate Banking

The Committee anticipates that reducing the barriers to interstate banking will have several benefits. The reform should promote diversification of asset and liability portfolios that will strengthen the banking system. Geographic restrictions make it difficult for banks to diversify their deposit bases and loan portfolios, leaving them vulnerable to downturns in the local economies where they do business. Secretary of the Treasury Nicholas Brady told the Committee on July 25, 1990, that "interstate banking permits banks to diversify and avoid being too closely tied to vicissitudes of local economies."

While banks currently have some ability to diversify their risks, such as by purchasing loan participations from banks in other regions, they are hampered by the lack of a physical presence in those regions. Without such a presence, banks may have only a partial understanding of the local economy and the assets they are purchasing. Geographic diversification will alleviate this problem.

Removing the remaining restrictions on interstate banking will promote efficiency in the banking system. Consolidation following repeal of the Douglas Amendment and the McFadden Act should also increase the banking industry's profitability. Secretary Brady told the Committee on February 26, 1991, that interstate banking restrictions "impose unnecessary costs on banks, costs that have been estimated at $10 billion annually." A study by McKinsey & Company banking expert Lowell Bryan estimates that the cost savings to the banking industry from mergers that would be encouraged by repeal of interstate banking and branching restrictions could total $10 billion to $15 billion in annual pretax earnings over each of the next five years. (*American Banker*, June 10, 1991) That is a significant savings for an industry that had pretax earnings of only approximately $24 billion in 1990. These savings could be used to replenish bank capital, increasing the ability of the banking industry to absorb its own losses. Greater efficiency in the banking industry will reduce strain on the deposit insurance fund and protect the taxpayers.

The Committee does not believe that increasing the opportunities for interstate banking will reduce the important role of regional and community banks. These institutions, with their special knowledge of their communities, contribute to the vigor of local economies throughout the country. They have already demonstrated their ability to compete in markets where national and international institutions have a presence. There is every reason to believe that properly managed and capitalized smaller banks will continue to thrive in the new banking environment. As Lloyd Cutler and Felix Rohatyn stated in their written testimony, "there will always be room for smaller, specialized regional or local banks if they provide superior service or otherwise differentiate themselves." Michael Aronstein of the National Taxpayers Union observed in his April 25, 1991 testimony "banking * * * is a business that requires local contact, personal analysis and some imagination stemming from localized experience. I think interstate banking would not alter those facts."

In short, the Committee believes that phasing out the Douglas Amendment will bring rationality to a system that is already well on the way to nationwide banking. As FDIC Chairman L. William Seidman summarized before the Committee on April 23, 1991:

> Interstate banking restrictions have contributed to the increased risk in the nation's banking industry and to the decrease in banks' competitiveness. Removal of these restrictions would permit lower risk through geographic diversification of lending. Banks also would be able to expand their operations to match the expansion of banking markets created by technology and economic growth.

Phasing out these restrictions should increase bank profitability, customer convenience and taxpayer protection. Federal Reserve Board Chairman Alan Greenspan testified on April 23, 1991:

> What interstate banking promises is wider consumer choices at better prices and, for our banking system, increased competition and efficiency, the elimination of unnecessary costs associated with the delivery of banking services, and risk reduction through diversification. The Board continues to urge its prompt adoption.

III. PROVISIONS OF S. 543 WILL PROMOTE COMPETITION AND PROFITABILITY

S. 543 will phase out over a period of years the current prohibitions on interstate branching and interstate banking.

A. Interstate Banking

Beginning one year after enactment, a bank holding company or a subsidiary will be able to acquire the voting shares of or assets of a bank in any state. Thus, one year after enactment of this bill interstate banking will be permitted in any state through acquisition of existing institutions. Beginning two years after enactment, a bank holding company will be allowed to establish a subsidiary bank in any state. Thus two years after enactment of this bill interstate banking will be permitted not only by acquiring existing institutions but by establishing *de novo* banks. Interstate banking, however, will be available only for adequately capitalized, adequately managed bank holding companies. This restriction reflects testimony by Comptroller General Charles Bowsher, who told the Committee on March 7, 1991 that while he favored interstate banking he did "not believe that weak banks should be allowed to expand through interstate mergers." The Federal Reserve Board will continue to approve any application by a bank holding company to acquire or establish a new subsidiary bank and will verify that all applicable conditions are met.

While state law will no longer govern whether interstate acquisitions or establishments may take place, the Federal Reserve is directed to weigh a bank holding company's compliance with state community reinvestment laws in considering an application. State law governing intrastate branching will continue to apply to both national banks and state banks in each state. To ensure fair competition, a bank holding company will not be permitted to operate a bank in another state under a name that is identical or similar to a name being used by an existing bank in that other state.

B. Interstate Branching

After three years, national banks and state banks will be allowed to branch in any state that has not prohibited interstate branching. Interstate branching will be available only for adequately capitalized, adequately managed banks. A national bank must obtain regulatory approval from the Comptroller of the Currency for each new branch. The Community Reinvestment Act will be adjusted to include a rating for each state or metropolitan area in which a bank operates. State-chartered banks will be able to branch interstate but only if its chartering state authorizes it to do so. State banks will also have to meet the same capital and management requirements as national banks that branch interstate.

During the three-year period beginning upon enactment, states may pass statutes prohibiting out-of-state banks from branching in. Thus, while interstate banking will be available across the nation, a state may "opt out" of interstate branching. States that "opt in" to interstate branching early, that is during the three year period, may for a five year period after enactment of this title allow an out-of-state bank to branch in only by acquiring existing banks or branches while prohibiting an out-of-state bank from establishing new branches. In addition, states that "opt in" may place conditions on incoming branches as long as such conditions do not discriminate against out of state banks and are not preempted by Federal law. These conditions continue to apply to the out of state branches until either amended or repealed by the state or preempted by Federal law.

Non-discriminatory state laws regarding intrastate branching, consumer protection, fair lending and community reinvestment will apply to branches of out-of-state banks as if they were branches of banks chartered by that state, unless such state law is preempted by Federal law. Such state law will be enforced with respect to branches of national banks by the Comptroller of the Currency. To ensure fair competition, a bank may not operate a branch in another state under a name that is identical or similar to a name being used by an existing bank in that state.

This bill removes the ability of states to block interstate branching by both national and state chartered banks three years after enactment, unless they opt out of branching before that time. It does not, however, authorize state chartered banks to branch. That decision will be made by each state bank's chartering state. It does give states into which state chartered banks branch (the "host states"), authority to determine compliance with certain host state laws and to ensure the branches' activities are conducted in a safe and sound manner. Host states may enforce their laws against branches of other state banks as if such branches were banks chartered by the host state. This means, among other things, that the host state can limit what powers an out of state bank branch may exercise in the host state to those powers that are permissible for host state banks.

To strengthen the ability of supervisors in the chartering and host states to oversee banks that branch, the bill authorizes such supervisors to enter cooperative agreements relating to the coordination of and joint participation in examinations. The consummation of such agreements does not impact on the authority of Federal banking agencies to examine any bank or branch for which they are the appropriate regulator. Unless such interstate supervision agreements are reached, however, the Federal regulators should not defer to state examinations of out of state branches. To do so would not safeguard the Federal interest in proper regulation of all banks engaging in interstate banking to ensure the stability of our banking system and the solvency of the deposit insurance fund.

C. Concentration Limits

Relaxation of the historical restrictions on interstate banking is not intended to allow large banks to acquire undue financial power nationwide or in individual states. In order to supplement the nation's antitrust laws, the Committee decided to address the issue of financial concentration. The title contains specific concentration limits applicable to the acquisition of banks. To help prevent excessive concentration of economic power in our country, a bank holding company may not acquire an existing bank in another state if the bank holding company controls or after the acquisition would control 10 percent of the assets of the nation's insured depository institutions. A bank holding company may not acquire an existing bank in another state if the bank holding company controls or after the acquisition would control 30 percent of the deposits in that state's insured depository institutions. The state may waive this latter prohibition. These limits apply only to a bank holding company's acquisition of existing banks, and not to the establishment of new banks.

Similar concentration limits apply to the acquisition of branches by banks. A bank may not acquire an existing branch in another state if the bank controls or after the acquisition would control 10 percent of the assets of the nation's insured depository institutions. A bank may not acquire an existing branch in another state if the bank controls or after the acquisition would control 30 percent of the deposits in that state's insured depository institutions. Again, the state may waive this latter prohibition. As above, these limits apply only to a bank's acquisition of existing branches, and not to the establishment of new branches.

Under the Bill as reported, the concentration levels will be determined with regard to combined bank and thrift assets and deposits, rather than just bank assets and deposits as in the Committee Print. The ten percent limit on national acquisitions would not presently block any mergers between our largest banks. It is a safeguard against future undue concentrations of economic power.

Likewise, the 30 percent limit on the deposits of a state's insured depository institutions that may be purchased by an outside institution is high enough currently to embrace only a few institutions that might dominate their marketplaces if permitted to engage in such mergers. States themselves may approve such mergers if they exceed the concentration limits set by this title. In addition, any banking organization is free to expand through establishment of banks and branches; only acquisitions that could lead to excessive concentrations are prohibited. As under current law, all bank mergers must be approved by Federal banking regulators and satisfy the antitrust laws.

D. S. 543 Preserves Commitment to Community Reinvestment

Commentators and witnesses before the Committee have expressed concern that interstate banking will be used to draw deposit dollars out of local communities. Alan Fishbein of the Center for Community Change told the Committee on April 25, 1991 that:

> [W]e believe that interstate branching would substantially weaken CRA enforcement. CRA is not a perfect tool, to be sure, but it is the only tool that communities have to ward off the possible disinvestment effects of geographic expansion across state lines. If communities were concerned that out-of-state banks are siphoning off their deposits and reinvesting these deposits elsewhere, they have the Community Reinvestment Act and the leverage it provides them to raise these issues with the Federal regulators. But CRA works by providing the requirement that the regulators evaluate institutions, not branches.

The Committee understands these concerns and believes that banks have an obligation to promote economic growth and meet the credit needs in their communities, including low- and moderate-income neighborhoods. Accordingly, S. 543 ensures that the principles of the Community Reinvestment Act will be observed under the system of interstate banking. To keep pace with the increasingly interstate nature of banking, title III amends the Community Reinvestment Act to require separate evaluations of a bank's record of performance in each state in which it has branches. (If a bank has branches in two or more states within a metropolitan area, regulators may instead evaluate the bank's performance in that metropolitan area.) E. Gerald Corrigan, President of the Federal Reserve Bank of New York, told the Committee on May 15, 1991:

> [I]f we move to nationwide banking, which I fervently hope we do, we will have to redouble our efforts in the area of * * * compliance examinations to make sure that the letter and the spirit of laws like the Community Reinvestment Act are protected.

In considering acquisitions of banks, the Federal Reserve must review a bank holding company's compliance with state community reinvestment laws. State community reinvestment laws will apply to all bank branches in the state, whether of in-state banks or out-of-state banks. These measures are intended to ensure that banks operating across state lines continue to meet their obligations to the communities they serve in all the states in which they conduct business.

E. Preservation of Status Quo On State Taxing Authority

Concerns were raised that authorizing interstate branching could either cause states to lose tax revenues as independently chartered subsidiary banks were converted to branches, or might lead host states to impose more onerous taxes on branches of out of state banks than on banks of that host state. The Committee adopted a provision to preserve the status quo on such issues in the face of changes in banking law made by this title. The tax laws of the host state shall apply and be enforced on a branch of an out-of-state bank as if the branch were a bank located in or chartered by the host state. The provision has no impact on whether states may require separate reporting or combined reporting. If banks are currently subject to combined reporting requirements, branches treated as banks will be similarly subjected to combined reporting. Treating branches like banks, therefore, leaves states as free as they are today to adopt either approach.

The provision also protects the status quo regarding whether a branch in the host state establishes a nexus to tax the operations of another part of the same bank holding company. For example, a bank holding company may have a subsidiary in State A and another in State B, which latter entity owns a bank in State C (the host State). The conversion of the bank in State C into a branch does not change the nexus to tax the operations in State A. The provision does not change the status quo. If State C could reach the State A subsidiary before the conversion of the State C bank to a branch, then that result is protected by the provision. If State C could not, then that result is likewise unchanged.

The provision does not provide substantive tax answers. By preserving the status quo in this area the Committee intends to facilitate interstate branching by mitigating the threat of needless litigation, and protecting against discriminatory taxation of out-of-state branches.

F. Conversion of Banks to Branches

Conversion of subsidiary banks to branches will promote efficiency and profitability for bank holding companies that own banks in more than one state by allowing for elimination of duplicative boards of directors, audits, capital requirements and other administrative costs. S. 543 accordingly allows an adequately capitalized and managed bank holding company owning subsidiary banks in more than one state to merge or consolidate those banks into branches of the main bank after June 1, 1993. However, a bank may not be so merged or consolidated if it is located in a state that "opts out" of interstate branching. Recognizing that the greater efficiency of a branch operation will promote savings that can be used to bolster bank capital and protect the taxpayers, S. 543 allows an undercapitalized bank holding company to merge or consolidate banks in any state as part of an approved capital restoration plan. The capital restoration plan must include at least one other element in addition to the merger or consolidation. The Committee intends that the Federal banking regulators should use this provision only when absolutely necessary to protect the deposit insurance funds and not as a means of thwarting states that "opt out" of interstate branching.

G. Foreign Banks

Presently, as is discussed below in title VI regarding the regulation and supervision of foreign banks in the United States, foreign banks have operations in fewer than one third of our states. Many states will not permit foreign banks to operate within their borders, while other states limit their operations. Title III, however, removes all state barriers to interstate banking and branching, unless a state opts out of branching. Since the United States extends national treatment to foreign banks, this Title provides that after three years foreign banks will have the same interstate banking and branching rights as domestic national and state banks. After three years, foreign banks will be able to operate in and branch into any state that has not opted out of the interstate branching provisions of this bill. Thus, present state limitations on foreign bank operations are voided insofar as they discriminate against foreign banks.

1. Capital and Other Requirements

The Federal Reserve Board and the appropriate Federal or state banking agency, however, must approve all branching by foreign banks. The Federal Reserve Board must apply the same standards to a branching application by a foreign bank as apply to an application for establishment of a United States facility of a foreign bank. Concentration limits set for interstate acquisitions of domestic banks likewise apply to foreign banks. Also, since the bill only permits adequately capitalized banks to branch, the Federal Reserve must determine that the foreign bank's financial resources, including its capital level, are equivalent to those required for approval of a branching application by a domestic bank. In the case of the first branching application by a foreign bank, the Federal Reserve must consult with the Secretary of the Treasury regarding capital equivalency. Capital equivalency determinations are to be made pursuant to guidelines issued jointly by the Treasury and the Federal Reserve Board. The Federal Reserve may require that the foreign bank establish an adequately capitalized banking subsidiary in the United States as a condition for approving a branching application by a foreign bank if it determines that the bank's adherence to the equivalent capital requirements in its worldwide operations cannot be verified. Even if such a verification cannot be made, the foreign bank need not convert or "roll up" its existing branches into one or more subsidiary banks unless it wishes to pursue interstate expansion. If it does, it must do so only through a separately capitalized U.S. subsidiary. This back up authority is being given to the Federal Reserve to use in cases where it has confidence in the management and financial resources of the foreign bank, but for various reasons cannot verify its capital. It is not meant to be a back door to interstate expansion for weakly capitalized foreign banks. This back up authority is intended to ensure that foreign banks are held to the same capital requirements as are imposed on their domestic bank competitors. For a full explanation of the rationale of the capital equivalency provisions adopted by the Committee, see the discussion below in Subtitle B of Title VI.

2. Taking of Insured Deposits

The Committee adopted a provision that provides that if a foreign bank maintains retail deposit accounts of less than $100,000 or wishes to do so, the foreign bank must establish one or more domestic banking subsidiaries to conduct all of its insured deposit taking. Presently most foreign banks do not take insured deposits in their U.S. branches. The Committee realized however that removing current Federal and state barriers to interstate banking and branching by foreign banks might lead to a substantial expansion of insured deposit taking by foreign banks. It had reservations about whether foreign banks should be able to take insured deposits in branches in this country or whether such deposits should be permitted only for subsidiaries of foreign banks. These reservations stemmed from concerns about whether sufficient legal and regulatory controls could be placed on branch operations that were not legally separate from those of the foreign bank. Chairman Seidman of the Federal Deposit Insurance Corporation stated in a July 29, 1991 letter to the Committee that "supervision and regulation of branches of an entity headquartered abroad gives rise to unique problems." Among the problems cited in the past by the FDIC were:

1. Directors of a foreign bank are not usually subject to U.S. jurisdiction and domestic branch personnel essential to explain certain transactions could be transferred beyond the reach of U.S. authorities. In addition essential records could be difficult to reach if they are kept at the head office or at branches in other countries.
2. The domestic branch could be subjected to requirements under foreign law or to political or economic decisions of a foreign government which conflict with domestic bank regulatory policies.
3. In the event of insolvency of a foreign bank, it is possible that assets could be easily and quickly shifted from the U.S. branch and out of U.S. jurisdiction while deposits could be shifted to the U.S. branch.

On the other side of the issue were considerations that protection of depositors in foreign branches might be enhanced because the foreign branch can rely on the worldwide capital resources of the foreign bank. It was also pointed out that no U.S. depositors have lost money in insured foreign branches in this country. The Committee decided that, although the matter was subject to further review, in the interest of protecting depositors and the taxpayers who stand behind the insurance fund, it would be prudent to require that foreign banks that take insured deposits in the United States do so only through a domestically chartered subsidiary bank and not through a branch of the foreign bank.

TITLE IV—REGULATORY RESTRUCTURING

SUBTITLE A—RESTRUCTURING BOARD OF DIRECTORS OF FDIC

Original subtitles A and B of the Committee Print would have combined the Office of the Comptroller of the Currency and the Office of Thrift Supervision in a new independent Federal Banking Commission. This subtitle, originally subtitle C of the Committee Print, made a conforming change in the composition of the Board of Directors of the FDIC, which currently consists of the Comptroller of the Currency, the Director of the Office of Thrift Supervision, and three Presidential appointees. This subtitle as it appeared in the Committee Print would have replaced the Comptroller of the Currency and the Director of the Office of Thrift Supervision with the Chairman of the Federal Banking Commission. The original subtitle would also have added the Chairman of the Board of Governors of the Federal Reserve System.

During markup of S. 543, the Committee adopted an amendment deleting original subtitles A and B of the Committee Print. The Committee did not adopt any amendments to this subtitle. Accordingly this subtitle provides that the FDIC Board of Directors consists of three Presidential appointees and the Chairman of the Federal Reserve Board, and reserves for further action by the Senate the position held by the Federal Banking Commission in the Committee Print.

SUBTITLE B—DEPOSITORY INSTITUTIONS COORDINATION

This Committee heard considerable testimony that our financial system suffers from a multiplicity of regulators and a dearth of regulatory coordination. Secretary of the Treasury Brady, for example, testifying before this Committee on February 26, 1991, admitted that "our fragmented regulatory system has not been successful in stemming the weakening of the banking industry. * * * [W]ith as many as four banking regulators involved in the affairs of a single banking organization, no single regulator has had either the full information or the clear authority and responsibility for the decisive, timely action necessary to deal with weak institutions."

This bill takes needed steps to improve the regulation and examination of depository institutions by breathing new life to the Federal Financial Institutions Examination Council ("FFIEC"). FFIEC was established in 1978 to increase coordination among federal examiners of financial institutions. FFIEC currently consists of the Chairman of the Federal Reserve Board, the Chairperson of the FDIC, the Director of OTS, the Comptroller of the Currency, and the NCUA Chairman. There is widespread feeling that FFIEC has not lived up to its mandate of establishing uniform examination policies and procedures.

Title IV restructures FFIEC and renames it the "Federal Financial Institutions Coordination Council" (the "Council"), to reflect its broader purposes. As described above, original subtitles A and B created a new Federal Banking Commission. This subtitle, as it originally appeared as subtitle D of the Committee Print, would have established the composition of the new council as the Chairman of the Federal Banking Commission, the Chairman of the Federal Reserve Board, and the Chairperson of the FDIC. As also described above, during markup of S. 543 the Committee adopted an amendment deleting original subtitles A and B of the Committee Print. The Committee did not adopt any amendments to this subtitle. Accordingly this subtitle provides that the new Council will be composed of the Chairperson of the FDIC, the Chairman of the Federal Reserve Board, and reserves for further action by the Senate the position held by the Federal Banking Commission in the Committee Print. In the interests of coordinating activities of Federal agencies as much as possible, the Council may wish to allow representatives of other agencies, such as the National Credit Union Administration, to attend its meetings.

The new Council will establish uniform policies and procedures for the examination of banks, thrifts and their holding companies by the Federal banking agencies. These policies and procedures will serve as minimum standards in the examination of depository institutions. This will reduce one of the disadvantages of our multiple regulator system: as former Chairman William Proxmire told the Committee on April 11, 1991, "[t]he present three-agency structure promotes competition in laxity. * * * Under the three-regulator system, a bank can avoid tougher regulation by changing or threatening to change its charter." The establishment of uniform standards will prevent any one regulator from compromising the integrity of the regulatory system.

The Council will similarly coordinate regulation among the agencies to achieve uniform reporting systems and procedures to be used by Federal banking agencies in carrying out their examination and supervisory functions. The Council is further instructed to reduce duplication in paperwork and examinations, keeping down the costs and inconvenience imposed on depository institutions.

The Council will ensure that by January 1, 1993 a coordinated supervisory effort is made with regard to a depository institution under the jurisdiction of more than one Federal banking agency. Coordination among the regulators is crucial because, as former Chairman Proxmire noted in his April 11, 1991 testimony, "[t]he three-agency structure * * * causes needless delays in regulation. The regulators do not address new problems quickly enough because of internal squabbling." An industry representative who deals with Federal regulators was even more blunt. David Holland, the chairman of Boston Federal Savings Bank, told the Committee on the same day that "[t]he regulatory system that oversees the national's financial system is a confusing hodgepodge of balkanized agencies." The Council will reduce this confusion and ensure that information does not fall through the cracks because each regulator believed the other was on top of a situation. The requirement that the Council ensure that interstate activities and branches of depository institutions are subject to the same level of examination and supervision as intrastate activities and branches will also prevent information from being lost in the regulatory system.

The Council will serve as a center for the improved training of bank examiners by developing comprehensive training programs. As bank examiners are the early warning system for the regulatory system, and the first line of defense for the Insurance Funds and the taxpayers, it is of critical importance that they be properly prepared for their task. All bank examiners will be required to undergo the course of training developed by the Council.

As with the current FFIEC, no special authorization or appropriation is required for the new Council. The staff of the Council will remain at its present small size, funded by contributions from the member agencies.

The Federal banking agencies are also directed to improve bank examination and regulatory coordination as part of this legislation. Each agency must implement an examination improvement program to review the agency's staff organization and the number, training and career paths of its bank examiners. The programs must make improvements appropriate to ensure frequent, objective, and thorough examinations of depository institutions.

Each agency further must establish a schedule of examinations for each institution for which it is the appropriate Federal banking agency and notify any other Federal agency with responsibility for that institution of the schedule. The other agencies generally must examine the institution at the same time as the lead examiner; each agency, however, may conduct an examination of an institution within its jurisdiction if the agency has reason to believe the condition of the institution is deteriorating or a violation has or is about to occur. The agencies will coordinate their examinations and may form joint examination teams. They may also invite the participation of any state banking supervisor in the coordinated examination.

As recognized elsewhere in this bill, efficient regulation of insured institutions is critical to the safety and soundness of the financial system and the protection of taxpayers. By improving the training of bank examiners and establishing uniform procedures, the revitalized Council will further ensure that regulators have the information they need to do their jobs properly. The coordinated examinations and reduced paperwork expected to flow from this system will mean a reduced regulatory burden and lower costs on the banking and thrift industries.

SUBTITLE C—BANK SECURITIES REGISTRATION

Subtitle C contains the provisions of the Bank Securities Registration and Administration Act originally introduced last year by Senator Wirth. This legislation addresses provisions in our securities laws under which securities issued by a bank or thrift or guaranteed by a bank are exempt from the registration and reporting requirements of the securities laws. While securities issued by a bank or thrift holding company must comply with SEC requirements, securities issued by a bank or thrift are regulated by the appropriate Federal banking agency for the institution issuing the security.

Subtitle C repeals the exemption from the registration requirements of the Securities Act of 1933 applicable to banks and thrifts. It similarly repeals an exemption from the periodic reporting requirements of the Securities Exchange Act of 1934. As a result of these changes, banks and thrifts will have to register their publicly-offered securities with the SEC and file periodic reports with the SEC.

These changes will provide uniform protection to investors who purchase securities issued by individual banks and thrifts by promoting full and fair disclosure of financial information needed to make sound investment decisions. Uniform regulation will promote investor confidence and improve the effectiveness and efficiency of securities regulation.

The SEC has well-established procedures for collecting, reviewing, and disseminating information provided by companies in their registration statements and periodic reports. Investors rely on this mechanism to obtain accurate information about companies in which they might invest. As the agency with the primary responsibility for and expertise in reviewing public securities offerings, the SEC already devotes significant resources to this task, including for bank and thrift holding companies. To the extent the SEC believes the expertise of the appropriate Federal banking agency would assist the SEC in reviewing the securities filings, the Committee encourages the SEC and the Federal banking agencies to cooperate.

This proposal has the strong support of the SEC.

TITLE V—CONSUMER PROTECTION

SUBTITLE A—TRUTH IN SAVINGS AND INVESTMENT ACT

Subtitle A of S.543 includes the provisions of the Truth in Savings and Investment Act, which passed the Banking Committee and the full Senate in the 101st Congress during consideration of the Money Laundering Enforcement Act of 1990. These provisions previously passed the Senate in 1988 as part of the Proxmire Financial Modernization Act.

History of the Legislation

The "Truth in Savings and Investments Act" seeks to enable depository institution consumers to compare different savings and investment products in order to make more informed decisions about where to invest their money. Prior to 1980, consumers could compare different deposit accounts relatively easily because strict Federal regulation permitted very little variation in terms and conditions. In the 1980's, however, interest rate deregulation freed depository institutions to offer not only a broader range of rates, but entirely new instruments with widely varying terms and conditions. As Alan Fox, former Legislative Representative of the Consumer Federation of America, testified before the Consumer Affairs Subcommittee on August 5, 1987, "[t]his transformation of the market for financial services has benefitted those consumers with adequate resources to take advantage of their new options. For most consumers, however, the expansion of options has not been matched with the expansion of information necessary to evaluate options and make informed choices."

The rise of alternative investment products has further complicated the problems and opportunities for consumers. With the interest rates on deposit accounts still regulated in the late 1970's and early 1980's, consumers shifted large amounts of their savings to money market mutual funds, which were not subject to interest-rate regulation. While such funds provided higher returns than most short term depository institution instruments, they were not directly comparable to deposit accounts because they lacked Federal deposit insurance and did not guarantee a future rate of return. Instead, such funds could provide only yield data reflecting past performance.

To address the concerns about inadequate disclosure of the key conditions of deposit accounts, and the problems of nonstandardized terms, former Banking Committee Chairman Proxmire and Senators Dodd and Heinz introduced S. 1507 on July 21, 1987. That bill would have required the disclosure of key terms in all advertisements, and a more comprehensive list of terms and conditions in specific schedules.

On August 5, 1987, the Consumer Affairs Subcommittee conducted a hearing at which witnesses from depository institution trade associations, a mutual fund trade association, consumer groups, the Securities and Exchange Commission and the Commissioner of Banking for the State of Connecticut appeared.

Mr. Fox of the Consumer Federation emphasized the importance of consumers having standardized and complete information for the marketplace to operate efficiently. He pointed out that consumers often do not receive such relevant information as "the basis of compounding, whether the interest is paid on an average or low balance, any minimum balance required to receive interest, and how the minimum balance is calculated." Without such information, consumers cannot compare yields of deposit accounts. Further, he noted "the difficulties of comparing time deposits of varying maturities and accounts that offer different rates of interest on different amounts or over the life of the deposit, or that vary the rate of interest to reflect market changes." Moreover, he noted, these considerations do not even address the range of service fees depository institutions can impose.

Mr. Fox expressed specific concern about depository institutions' use of the "investable balance" method, whereby some institutions pay the disclosed rate of interest on only a portion of the account, usually citing the need to put a certain portion into reserves held by the Federal Reserve System. He also cited the enormous differences in return between accounts that calculate interest using an average daily balance method as contrasted with a low balance method, which calculates interest using the consumer's lowest balance for any day during the period. Mr. Fox advocated comprehensive disclosure, the use of a standardized balance calculation method, and a ban on the use of the investable balance method.

As a result of the hearings, S. 1507 was revised and then included as title VI of S. 1886, the Proxmire Financial Modernization Act of 1988. That legislation passed the Senate on March 30, 1988, by a 94-2 vote. However, the House failed to act on similar legislation and the bill was not adopted in the 100th Congress.

In the 101st Congress, Senator Dodd introduced S. 307, the Truth in Savings and Investments Act, on January 31, 1989. Chairman Riegle and Senators Lieberman, Heinz, D'Amato, Dixon, and Bond cosponsored the legislation. The Committee included the provisions of S. 307, with minor changes, as Title III of the Money Laundering Enforcement Amendments of 1990, which passed the full Senate by voice vote on October 5, 1990. Unfortunately, however, the 101st Congress did not complete work on that legislation before adjourning sine die.

Senator Dodd reintroduced the Truth in Savings and Investment Act, now designated S.817, early in the 102nd Congress. Chairman Riegle included the provisions of the Act as Subtitle A of Title V of the S.543 Committee Print circulated on July 16, 1991. Subtitle A differs from its predecessor, S.307, only in minor respects.

In testimony before the Committee in the spring of 1991, several consumer groups noted the continuing need for enactment of S.817. Consumer Advocate Ed Mierzwinski, testifying on behalf of the U.S. Public Interest Research Group (U.S. PIRG) stressed the urgent need for legislation to bar the "investable balance" method of calculating interest payable on deposits:

> I call your attention particularly to the provisions of Truth-in-Savings that would prohibit the so-called "investable balance" method of account calculation. Under this onerous and deceptive mechanism, banks allege that because of government reserve requirements, they can only pay interest on 88 percent, or 97 percent, of your balance, representing either the 3 percent or 12 percent reserve requirements. The goal of this subterfuge is obvious: the advertised interest rate can be artificially inflated, because it is being paid on less than your full balance. Mr. Chairman, to assert that reserve requirements prohibit paying interest on the full amount in a savings account is very misleading.[1]

Joan King, Chairperson of the State Legislative Committee of the American Association of Retired Persons ("AARP"), presented similar views on behalf of the AARP:

> The wide variety and complexity of accounts, services, and transactions currently available through financial institutions highlights the importance of clear, comprehensive, and comparable disclosures about fees, terms, conditions, and other requirements. Without such disclosures, the ability of the consumer to make informed decisions is difficult, if not impossible.[2]

Discussion

Subtitle A, the Truth in Savings and Investment Act, seeks to protect consumers from unfair practices and provide them with the information they need to make valid comparisons between alternative savings and investment options. The Committee has found uniformity in the calculation and disclosure of the yields and basic terms and conditions of accounts would improve the ability of consumers to make such comparisons and enhance competition among depository institutions. Consumers need better information in order to make meaningful comparisons between competing deposit accounts and loans.

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[1] Written statement of Ed Mierzwinski, 1 (April 25, 1991).
[2] Written statement of the AARP, 8 (April 25, 1991).

Subtitle A requires depository institutions and other entities to disclose in their solicitations basic information about yields and fees. Among other things, it requires disclosure of the annual percentage yield, the period it will be in effect, any minimum account balance and time requirements, the minimum amount of the initial deposit, a statement that regular fees or other conditions could reduce the yield, and a statement that a penalty may be imposed for early withdrawal. The subtitle also requires each depository institution to maintain a detailed schedule of fees, charges, yields, and other terms and conditions.

Today, depository institutions are free to calculate interest on deposits in many different ways. This subtitle would require them to follow uniform rules for calculating interest. Specifically, it would require depository institutions to calculate interest on the full principal balance in an interest-bearing account using either the day of deposit to day of withdrawal or the average daily balance method. According to the American Bankers' Association 1988 Retail Deposit Services Report, approximately 90 percent of all depository institutions now use these two methods. From the consumer standpoint, the two methods produce very similar results.

Subtitle A would prohibit the use of all other methods of calculating interest, including the low balance method and the investable balance method. By permitting interest to be based on the lowest balance in the account on any day during the accounting period, the low balance method denies consumers a fair return. The investable balance method also allows depository institutions to pay interest on less than the full amount of principal in an account. A July 15, 1991 article in Investors Daily reported that a growing number of depository institutions are paying interest only on 88% of deposits in NOW, Super NOW, and money-market checking accounts.

SUBTITLE B—FAIR LENDING ENFORCEMENT ACT

The Fair Lending Enforcement Act addresses the disturbing evidence suggesting discrimination against racial minorities and minority neighborhoods in home mortgage lending by improving enforcement procedures in various ways. The legislation is designed to cause the federal depository institution regulatory agencies to monitor more closely and to respond more forcefully to patterns of lending which suggest discrimination and to individual complaints of discrimination. The legislation will also enhance the ability of individuals to pursue their rights under fair lending laws by requiring lenders to make appraisal reports available to loan applicants and by requiring the regulatory agencies to inform victims of discrimination that they may have certain rights. It is also designed to enable the Department of Justice and the Department of Housing and Urban Development (HUD) to play a greater role in enforcing fair lending laws. Finally, the law tailors the small mortgage banker exemption in the Home Mortgage Disclosure Act to the mortgage banking industry. The Committee expects that the legislation will also have a salutary effect on compliance with other consumer and community reinvestment laws.

History of the Legislation

In 1989, the Subcommittee on Consumer and Regulatory Affairs held two hearings on the subject of discrimination in home mortgage lending. The concepts embodied in the legislation were developed at these hearings.

The witnesses at the initial October 24, 1989 Subcommittee hearing were: John P. LaWare, Member of the Board of Governors of the Federal Reserve System; C. Austin Fitts, Assistant Secretary for Housing and Federal Housing Commissioner, HUD: Jonathan Fiechter, Senior Deputy Director for Supervision Policy, OTS; Robert J. Hermann, Senior Deputy Comptroller for Bank Supervision Policy, OCC; John F. Bovenzi, Deputy to the Chairman, FDIC; Allen Fishbein, General Counsel, Center for Community Change; Arthur L. Johnson and Bernard Parker, Jr., Co-Chairs, Ad Hoc Coalition on Fair Banking Practices in Detroit; Shanna L. Smith, Representative, National Fair Housing Alliance, Inc.; Wade J. Henderson and Stephen M. Dane, Representatives, Leadership Conference on Civil Rights. Testimony was submitted for the record by the Cuyahoga Plan of Ohio, Inc., and the National Puerto Rican Coalition, Inc.

At the initial hearing, the federal regulatory agencies and HUD submitted their reports to Congress on statistical evidence of discrimination and recommendations for action, as required by Section 1220 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRRE"). The regulatory agencies generally found very few violations of anti-discrimination laws in their examination procedures, even though press reports and statistical studies have strongly suggested discrimination in many cities across the country. The community group/civil rights witnesses testified that the federal regulatory agencies "are either unable or unwilling to use the full scope of their supervisory powers to address the problem of mortgage lending discrimination." [3] They also cited studies showing the disparities in levels of lending between comparable minority and non-minority neighborhoods and disparities in rejection rates between minority and non-minority loan applicants.

The Subcommittee held a follow-up hearing on May 16, 1990. The witnesses were: John P. LaWare, Member of the Federal Reserve Board; Gordon H. Mansfield, Assistant Secretary for Fair Housing and Equal Opportunity, HUD; Robert J. Hermann, Senior Deputy Comptroller for Bank Supervision Policy, OCC; John F. Bovenzi, Deputy to the Chairman, FDIC; Jerauld C. Kluckman, Director of Compliance Programs, OTS; Michelle C. White, Housing Specialist, Western Center on Law and Poverty; Shanna L. Smith, Representative, National Fair Housing Alliance, Inc.; Allen Fishbein, General Counsel, Center for Community Change; Calvin Bradford, Representative, Chicago Fair Housing Alliance.

Each of the regulatory agencies, except for the OCC, reported on new initiatives taken over the preceding six months. For example, the FDIC had begun establishing a separate consumer compliance examiner program. The regulatory agencies also reported on their efforts to improve the training of consumer examiners, particularly with regard to Community Reinvestment Act (CRA) examination techniques in order to enhance uniformity. The community group/civil rights witnesses testified about legislative or regulatory recommendations for eliminating mortgage discrimination and their experience with testers' programs. They also testified that the regulators' enforcement efforts over the past six months had shown little improvement and that the regulators' examination procedures were inadequate in both detecting and addressing discrimination. The Subcommittee also found evidence that responses to consumer complaints, particularly for the OCC, may be inadequate and that low appraisals reflecting prejudice against minority neighborhoods may be part of the problem.

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[3] Discrimination in Home Mortgage Lending: Oversight Hearing Before the Subcomm. on Consumer and Regulatory Affairs of the Senate Committee on Banking, Housing, and Urban Affairs, 101st Cong., 1st Sess. 159 (Oct. 1989)(statement of Allen Fishbein, General Counsel, Center for Community Change)[hereinafer cited as "1989 Hearing"].

Senator Dixon introduced the Fair Lending Enforcement Act in the 101st Congress as S.3049. On July 17, 1990, the Banking Committee voted to adopt the legislation by voice vote, without objection, and to report the bill to the Senate. The Fair Lending Enforcement Act passed the Senate by voice vote on October 5, 1990 as part of the Money Laundering Enforcement Amendments Act but was not enacted. The Senate also passed the Act as stand-alone legislation by voice vote on October 27, 1990.

Senator Dixon reintroduced the Fair Lending Enforcement Act, now designated S.529, early in the 102nd Congress. Chairman Riegle included the provisions of the Act as Subtitle B of Title V of the S. 543 Committee Print circulated on July 16, 1991. Subtitle B differs from its predecessor, S.3049, only in minor respects.

Background

A. Fair lending laws

Two overlapping statutes specifically make discrimination in mortgage lending illegal: the Fair Housing Act (FHA) [4] and the Equal Credit Opportunity Act (ECOA). [5] In addition, the Civil Rights Acts of 1866 [6] and 1870 [7] have also been interpreted to bar racial discrimination in lending.

ECOA, enacted in 1974, prohibits discrimination against an applicant for credit because of race, color, religion, national origin, sex, marital status, age, receipt of public assistance, or efforts to exercise consumer rights. The law requires notification of a denial of credit in writing, with the reason specified if the consumer so requests. An aggrieved applicant may sue for actual damages plus $10,000 in punitive damages and attorney's fees. The various federal banking/depository institution regulatory agencies, along with the Federal Trade Commission and several other independent agencies, enforce ECOA. Under current law, the Justice Department may bring a civil enforcement action whenever it has reason to believe a creditor has engaged in a pattern or practice of violating ECOA or whenever another government agency refers an enforcement matter because it has been unable to obtain compliance.

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[4] Fair Housing Act of 1968, 42 U.S.C. § 3605

[5] Equal Credit Opportunity Act, 15 U.S.C. § 1691(1974)(amended 1976 and 1980).

[6] Civil RIghts Acts of 1866 and 1870, 42 U.S.C. §§ 1981, 1982, and 1983.

[7] Equal Credit Opportunity Act (Reg B) regulations, 12 C.F.R. § 202 (1977) (amended 1985).

ECOA regulations[8] require creditors to collect information about the applicant's race and gender and to maintain credit files for 25 months. Discouraging applications on a prohibited basis and advertising which implies a discriminatory preference are also prohibited. Additionally, creditors are barred from considering information which is discriminatory in effect unless there is a statistically valid relationship between the criteria and creditworthiness.

FHA is Title VIII of the Civil Rights Act of 1968. It prohibits discrimination on the basis of race, color, religion, national origin, sex, familial status or handicap in the financing, sale, or rental of housing. HUD has primary responsibility for administering FHA. An aggrieved person may sue directly or may use HUD's complaint procedure. HUD may itself initiate complaints. The Attorney General is also authorized to enforce discriminatory "pattern and practice" cases.

FHA was amended in 1988 to facilitate tougher enforcement.[9] By regulation and/or case law, FHA has been interpreted to prohibit racial redlining, low appraisals of property based on racial considerations, and portraying a racially exclusive image in advertising. FHA requires the regulators to "administer their programs and activities * * * in a manner affirmatively to further the purposes of [the statute] and [to] cooperate with the Secretary [of HUD] to further such purposes.[10]

B. Loan discrimination studies and testimony

The Atlanta Journal and Constitution published a comprehensive, Pulitzer prize-winning series in May 1988.[11] Its analysis of data obtained from the Federal Home Loan Bank Board (the predecessor to the current Office of Thrift Supervision) and other sources showed that middle income white neighborhoods received five times as many loans from thrifts as middle income black neighborhoods, and economic factors could not explain this difference. A follow-up article in January, 1989,[12] reported that black applicants for thrift mortgages were rejected more than twice as often as whites nationally, and more than three times as often in a variety of cities. According to this article, in most cities in most recent years, high-income blacks were rejected for mortgage loans more frequently than low-income whites. Also, these racial disparities appear to have increased substantially over the past fifteen years. Various studies in other cities across the country have reached similar conclusions.

In September, 1989, the Boston Federal Reserve Bank released another, more sophisticated economic analysis.[13] This study concluded that mortgage originations in black neighborhoods are 24% lower than in white neighborhoods even after taking account of housing stock, levels of income and wealth, and other economic factors which might explain the differential lending rates. The study also showed that Boston mortgage bankers did not make up the gap in lending to minority areas left by the banks and thrifts. Like banks and thrifts, mortgage bankers lent less in black neighborhoods than in comparable white neighborhoods.

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[8] Equal Credit Opportunity Act (Reg B) regulations, 12 C.F.R. § 202(1977)(amended 1985).

[9] See Report of the Citizens Commission on Civil Rights, "Federal Enforcement of the Fair Lending, Equal Credit Opportunity, and Community Reinvestment Laws in the 1980s," in "One Nation, Indivisible: The Civil Rights Challenge for the 1990s" at 235 (Stephen M. Dane 1989).

[10] Fair Housing Act, 42 U.S.C. § 3608, § 808(d).

[11] Dedman, "The Color of Money: Home Mortgage Lending Practices Discriminate Against Blacks," Atlanta Journal Constitution, May 1-4, 1988.

[12] Dedman, "Blacks Turned Down for Home Loans from S&Ls Twice as Often as Whites," Atlanta Journal Constitution, Jan. 22, 1989.

[13] K.L. Bradbury, K.E. Case, and C. Dunham, "Geographic Patterns of Mortgage Lending in Boston, 1982-198" (1989), reprinted in "New England Economic Review" (Boston Federal Reserve Bank Sept. Oct. 1989).

These loan discrimination studies were discussed at two hearings on mortgage discrimination convened by the Consumer and Regulatory Affairs Subcommittee in October, 1989, and May, 1990. At the May 16, 1989, hearing the OTS testified that its most recent statistics show the gap in mortgage loan rejections between blacks and whites has widened. From the second half of 1988 to the first half of 1989, the rejection rate for white applicants increased from 11 percent to 13 percent while the rate for black applicants increased from 23 percent to 29 percent.[14] At the earlier, October, 1989, hearing the OTS reported a simple 2 to 1 ratio between black and white rejections.[15] OTS is the only federal depository institution regulatory agency which prior to 1990 collected data on loan acceptance and rejection rates.[16]

At the October 24, 1989, hearing, Allen Fishbein testified that a 1989 study of 14 major cities by the Center for Community Change found:

> [T]he rate of mortgage lending in minority communities was one-third of what it is in non-minority communities. Moreover, we found that this differential continues regardless of income level, so that in middle income census tracts comparing minority and nonminority, the difference is still one-third lending. * * * [T]he banking regulatory agencies that have had this responsibility for 20 years just simply lack the will or the expertise to determine whether discrimination is occurring.[17]

Other mortgage lending studies[18] were referred to, and much anecdotal evidence of discrimination[19] was presented, at the hearings. For example, Stephen Dane testified:

> The discrimination in mortgage lending with which I've become familiar is not necessarily malicious or abusive. Indeed, in many cases, it's often unconscious. It, neverthe-

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[14] Discrimination in Home Mortgage Lending: Oversight Hearing Before the Subcom. on Consumer and Regulatory Affairs of the Senate Committee on Banking, Housing, and Urban Affairs, 101st Cong., 1st Sess. (May 1990) (statement of Jerauld Kluckman, Director, Compliance Programs, OTS) [hereinafter cited as 1990 Hearing].

[15] Jonathon Fiechter, Senior Deputy Director of Supervisory Policy, OTS, 1989 Hearing, at 31.

[16] FIRREA expanded the Home Mortgage DIsclosure Act so that all federal depository institution regulatory agencies must collect data on acceptance and rejection rates from the institutions they supervise starting in 1990. In 1977, pursuant to a [National Urban League v. Comptroller of the Currency, 78 F.R.D. 543 (D.D.C. 1976)] case settlement OTS, OCC, and the FDIC were all required to collect loan registry data, including acceptance and rejection data, but the settlement agreements expired in the early 1980's. See Fishbein, *"1989 Hearing"* at 169–71.

[17] S. Hrg. 479, 101st Cong., 1st. Sess. 153–54 (October 24, 1989).

[18] Fishbein, 1989 *Hearing*, at 183–7 (attachment I to statement).

[19] Stephen M. Dane, Representative, Leadership Conference on Civil Rights, *1989 Hearing*, at 217; Shanna Smith, Representative, National Fair Housing Alliance, Inc., *1989 Hearing*, at 259, 263–66; Fishbein, *1990 Hearing*, at 161–2.

> less, has been found to exist and is generally embodied in some sort of unfounded reluctance to engage in mortgage lending in certain neighborhoods.
>
> I want to distinguish that from discrimination on the basis of the applicants themselves, which I've had very little experience or exposure to * * *[20]

Testimony from Bernard Parker, however, illustrated a case of discrimination against an individual rather than a neighborhood. He repeated the comments of a rejected loan applicant who said, "They make me feel like I was wasting my time. Like I wasn't worthy of being a home owner."[21]

C. FIRREA and regulatory agency reports

Section 1211 of FIRREA expanded the Home Mortgage Disclosure Act (HMDA)[22] so that mortgage bankers, as well as banks, thrifts, and credit unions, must disclose acceptance and rejection rates for mortgage loan applicants according to the applicants' race, gender, and income level. Previously, data was collected only by census tract and only for loans approved. Section 1212 of FIRREA additionally provided that starting in June 1990, non-numerical ratings and written evaluations of bank and thrift compliance with the Community Reinvestment Act would be publicly disclosed.

Section 1220 of FIRREA required all the federal depository institution regulatory agencies and HUD to report to Congress on statistical evidence of discrimination and recommendations for action. Few of the reports, except for those from the Federal Reserve and HUD, contained recommendations for remedying mortgage discrimination.

The Federal Reserve reported that studies in Atlanta, Boston, Cleveland, and Detroit have all concluded that areas with predominantly black populations receive fewer (in number and dollar volume) home purchase loans from commercial banks and thrifts than similar predominantly white neighborhoods, even after accounting for differences in neighborhood income levels, number of housing units and other economic variables. The report also described several initiatives which the Federal Financial Institution Examination Council was reviewing, including mortgage review boards. (Mortgage review boards are forums of lenders and community group representatives that review rejected loan applications for the purpose of reversing discriminatory decisions and/or locating lenders with more flexible underwriting criteria.)

HUD's report admitted that it had not been collecting HMDA data properly since 1980 and vowed to correct its data base. HUD committed to several other data collection and analysis efforts, to reviewing its interagency agreements with the financial regulatory agencies, and to monitoring mortgage bankers for fair lending.

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[20] *Id.*, 210–11.

[21] Bernard Parker, Co-Chair, Ad Hoc Coalition on Fair Banking Practices in Detroit, *1989 Hearing*, at 140.

[22] Home Mortgage Disclosure Act, 12 U.S.C. § 2801 et seq. (1975) (amended 1980, 1983, 1985, 1986, 1987, 1988 and 1989).

OTS reported that black mortgage loan applicants are rejected roughly twice as often as white mortgage loan applicants, but that these statistics "in and of themselves, do not indicate that savings associations are discriminating on a prohibited basis."[23]

The Legislation

A. Access to appraisal reports

In hearings witnesses presented evidence that discrimination may occur in the appraisal of a property. Shanna Smith of the National Fair Housing Alliance testified:

> Some loan officers make the appraiser the convenient scapegoat for a loan denial by saying, "The property did not appraise out and I cannot share the appraisal report with you." Even though the applicant paid for the report, most lenders will not share it.[24]

Michelle White of the Western Center on Law and Poverty testified:

> Residents in African-American and Latino sections of Los Angeles often complain that their residences are routinely underappraised. * * * To the extent that the bank regulatory agencies permit financial institutions to rely upon appraisals which contribute to discriminatory lending patterns, these agencies must alter their practices.[25]

And, Allen Fishbein of the Center for Community Change testified:

> Fair housing advocates have long held that under-appraisals are used as a method of rejecting an applicant seeking a mortgage for property located in a minority neighborhood. Unfortunately, most lenders treat the appraisal reports as their own property and will not share the information with the applicant (even though the applicant has paid for it). As a result, applicants do not have access to the information and cannot contest incorrect appraisals.
>
> We support legislation that would guarantee the applicant's right to obtain a copy of his or her appraisal report. The release of this information would go a long way toward discouraging appraisers and lenders from engaging in discriminatory practices in the way in which they estimate property values.[26]

This discrimination may occur when properties in minority neighborhoods are under-appraised by white appraisers who are not familiar with true market prices in such neighborhoods. Witness Barnard Parker testified that this was a problem in Detroit and that such appraisals were used to discourage and disqualify loans.[27]

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[23] Fiechter, *1989 Hearing*, at 31.

[24] *Id.*, 260.

[25] S. Hrg. 942, 101st Cong., 2d Sess. 127 (May 16, 1990).

[26] *Id.*, 148.

[27] Parker, *1989 Hearing*, at 148.

The legislation, therefore, requires lenders under specified conditions to provide loan applicants with a copy of the appraisal report done on the subject property. By providing the loan applicant with the appraisal, he or she—perhaps with the aid of counsel—will better be able to determine whether a loan was denied due to a discriminatory appraisal.

The legislation allows lenders to require that the loan applicant pay for the appraisal before receiving a copy. Loan applicants customarily write a separate check in making a loan application to pay for the appraisal. However, if the appraisal fee were included in the general loan application fee, lenders would not be allowed to require loan applicants to pay a second time in order to receive the appraisal.

Regulations by the National Credit Union Administration (NCUA) currently require credit unions to make appraisals available without regard to who has paid for the appraisal;[28] test this legislation is not intended to modify those NCUA regulations. Neither is the legislation intended to affect the current custom of many lenders routinely to provide copies of appraisal reports.

B. Regulatory agency consumer compliance programs

Both the Federal Reserve and OTS[29] testified that separate consumer compliance examiners were necessary for adequate enforcement of consumer protection laws. The Federal Reserve's written testimony stated:

> The Board believes that expecting a bank examiner to master both the "safety and soundness" and consumer affairs/civil rights aspects of bank examinations is not practical given the existing complexities of both areas which continue to increase. Consequently, the Federal Reserve has developed a separate career path for consumer affairs examiners equivalent to that of commercial examiners at the Reserve Banks. The Board provides special training to these examiners.[30]

Several community group/civil rights witnesses testified that the regulatory agencies have difficulty identifying discrimination. Michelle White explained:

> One of the regulators referred to the fact that something didn't smell bad enough to be investigated further. I think that's the seat of the pants approach that most of the regulators take to this. And what I found in the course of my investigations or my consideration of files while [I was Special Assistant for Civil Rights] at the OCC: those things that smelled badly to me never even occurred to examiners as being offensive.[31]

Inadequate examination techniques and examiner training are partial causes. For example, the agencies do not compare similar loans or loan rejection rates across neighborhoods to see whether more loans are rejected in minority neighborhoods.

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[28] National Credit Union Administration regulations, 12 C.F.R. 701.31(c)(5) (1989).

[29] Fiechter, *1989 Hearing*, at 37. See also exchange between John Bovenzi and Senator Bond, *1989 Hearing*, at 125-6.

[30] *Id.*, 17.

[31] *Id.*, 120.

The community group/civil rights witnesses testified in favor of requiring the regulatory agencies to create separate consumer compliance divisions in order to place a higher priority on consumer compliance—including fair lending and Community Reinvestment Act enforcement—within the regulatory agencies. Allen Fishbein testified:

> We have long advocated the need for developing a separate specialized examination division for fair lending, CRA, and consumer compliance.
>
> The divisions would have the responsibility for conducting these examinations, using a staff of trained specialists in these areas. Most importantly, these consumer divisions would report directly to the head of the agency. The division would also make recommendations on pending bank expansion applications based on the CRA/fair lending and consumer compliance records of the applicant institutions and its subsidiaries. * * * [I]t must be emphasized that unless the chief of this division has the authority to report directly to the agency head * * * the thrust of these separate examinations are likely to [be] buried within the overall examination function.[32]

The Committee, thus, concludes that consumer compliance will receive the consistent enforcement attention that is needed only if one member of senior agency management is responsible for this area. It is also crucial that consumer compliance examiners receive specialized training, that examination techniques be designed properly, and that consumer examinations be conducted on a regular basis. All these factors are necessary to ensure compliance with consumer laws.

The legislation requires all the depository institution regulatory agencies to establish separate consumer compliance programs with specially trained consumer compliance examiners. The head of this program must report directly to the head of the agency. Consumer compliance exams are required to be conducted either every two years or no less frequently than regular safety and soundness examinations, whichever is less frequent. This subtitle does not mandate that the OCC abandon its current random-sampling and targeted approach to compliance examinations.

The current structure of the Federal Reserve System with its Division of Consumer and Community Affairs served as the organizational model for the legislation. However, the legislation requires the agencies only to have separate consumer compliance programs, not separate divisions. Not mandating a separate consumer division provides the regulatory agencies more flexibility in adapting their organizational structure. The head of the consumer program has full authority over the consumer compliance examinations, including their content, procedures, and review, and is required to oversee (but not necessarily supervise) the consumer compliance examiners.

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[32] *Id.*, 169-70.

The Committee intends that consumer compliance examiners might also examine safety and soundness operations of small depository institutions, if a regulatory agency finds that significant inefficiencies would otherwise result or a systemic emergency occurs. In other words, examiners who normally conduct safety and soundness exams could be tapped under these conditions to perform consumer compliance examinations, provided that they had received specialized training in consumer compliance. However, the Committee intends that consumer compliance examiners who specialize exclusively in consumer compliance will conduct examinations at large institutions. For example, onsite examinations of depository institutions which are large enough normally to require three or more examiners should include one consumer compliance examiner who specializes exclusively in consumer compliance. This example does not imply that the agencies are required to conduct consumer compliance examinations at the same time as safety and soundness exams.

The legislation also includes certain directives to the agencies in an attempt to guard against second class treatment of those involved in fair lending and consumer compliance examinations. Although some additional personnel may be required at certain regulatory agencies, the legislation emphasizes the need to improve agency structure, priorities, training, and examination techniques rather than adding new personnel. Testimony by Allen Fishbein emphasized this point:

> Well what I'm proposing really shouldn't affect the number of examiners, it's where they're housed in the organizational structure and how high a priority they receive within each of these agencies. And we feel that in those areas it's just not sufficient [now].[33]

The Committee believes that the legislation will allow the regulatory agencies to attend to both safety and soundness and consumer compliance issues.

C. Referrals of suspected discrimination

The Committee also found problems with fair lending enforcement, even after evidence of discrimination was identified. The regulatory agencies showed great reluctance to take strong action against any depository institution found to be discriminating. Testimony from both hearings showed that HUD and the Justice Department would likely take a more appropriate approach to remedying discrimination.

Shanna Smith, representing the National Fair Housing Alliance, testified:

> The deterrent to continued discriminatory behavior has proven to be significant monetary damages: compensatory or punitive or a combination of both. Yet the regulators cannot, do not, or will not seek these remedies or refer cases to HUD or Justice so they can use the full force of the Fair Housing Act to change discriminatory practices.[34]

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[33] *Id.*, 200-01.

[34] *Id.*, 137.

Consequently, the Alliance recommended:

> Require bank examiners to refer all complaints of mortgage lending, refinancing, home equity or insuring discrimination and any real estate related transaction where discrimination is alleged to both the Department of Justice and HUD's Fair Housing and Equal Opportunity Division. Referrals would include not only all complaints, but any and all information obtained during an examination that might indicate disparate treatment or potential violations of the Fair Housing Act and Equal Credit Opportunity Act. [35]

Testimony by Michelle White also recommended:

> HUD investigators should be given more information on a routine basis. The results of HUD investigations should be routinely given to complainants, so that they can make a more informed determination about the merits of their cases before filing suit. [36]

The legislation, therefore, requires the financial regulatory agencies to refer suspected substantive pattern and practice cases of discrimination under the Equal Credit Opportunity Act to the Justice Department. In addition, the bank regulatory agencies are given the authority to refer any individual suspected cases to the Attorney General. Under current law the agencies refer cases to the Justice Department only "if unable to obtain compliance." [37]

Under current ECOA law individuals may sue for actual and punitive damages, but a 1980 federal district court decision restricts the Justice Department to injunctive relief. [38] The legislation corrects the result of this case by explicitly authorizing the Justice Department to seek actual and punitive damages for ECOA violations. Since the Fair Housing Act (FHA) already provides for punitive damages in amounts significantly larger than those provided in ECOA, this change would not increase a lender's liability in mortgage discrimination cases. It would, however, renew the Justice Department's incentive to bring appropriate ECOA cases. Punitive damages under ECOA are limited to $10,000 for individual cases. [39]

Under current procedures, when a regulatory agency finds discrimination it directs the depository institution to change any discriminatory policies or practices. Victims of discrimination are invited to re-apply for loans, but no indication that the person may have been discriminated against is provided. If a loan applicant has found a different loan at a higher rate, the initial discriminating lender pays only the difference in interest rates. In short, full compensation for damages incurred is not sought; the discriminating institution suffers no penalty. Since HUD is responsible for the Fair Housing Act, it has a bureaucracy trained to conciliate claims and to evaluate damage claims in a more compensatory manner.

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[35] *Id.*, 140.

[36] *Id.*, 128.

[37] Equal Credit Opportunity Act, 15 U.S.C. § 1691e(g), § 706(g).

[38] *U.S. v. Beneficial Corp.*, 673 F. Supp. 492 (D. N.J. 1980), *affirmed without opinion* 673 F. 2d (3d Cir. 1981).

[39] Equal Credit Opportunity Act, 15 U.S.C. § 1691e(b), § 706(b) (also provides limits on punitive damages in class action cases).

Thus, the legislation additionally requires the financial regulatory agencies to refer suspected individual cases of mortgage discrimination to HUD and to notify the loan applicant that remedies may be available under the Fair Housing Act.

D. Technical amendment to the Home Mortgage Disclosure Act

In FIRREA Congress intended to extend the Home Mortgage Disclosure Act ("HMDA") to all for-profit mortgage lenders, including mortgage bankers. However, depository institutions (and mortgage bankers, because they were included in this definition) with less than $10,000,000 in assets are exempt from HMDA. A $10,000,000 asset exemption is inappropriate for mortgage bankers since they normally sell all their loans to the secondary market and are left with few assets.

The legislation, therefore, makes a technical amendment to HMDA to address this drafting error from FIRREA. The technical amendment provides for a small-mortgage bankers (and other lending institutions) exemption which is tailored to the mortgage banking industry (and the industries of other lending institutions). It takes non-depository institution mortgage lenders out of the $10,000,000 exemption and requires the Federal Reserve, in consultation with HUD, to establish a comparable exemption appropriate to these mortgage lenders whose normal business flow leaves them with relatively few assets.

SUBTITLE C—ACCESS TO FINANCIAL SERVICES ACT

History of the Legislation

The need for legislation to address the problem of access to the financial system for low-income individuals has been widely recognized for several years. Members of the Senate have introduced a number of bills to address this problem.

In April, 1989, during the Senate's deliberations over FIRREA, Senator Metzenbaum proposed an amendment that would have required insured depository institutions to offer low-cost checking accounts and government check cashing services. At the request of Chairman Riegle and Senator Dixon, Chairman of the Consumer and Regulatory Affairs Subcommittee, however, Senator Metzenbaum agreed to withhold his amendment pending a hearing on his proposed amendment in the Banking Committee.

On June 6, 1989, the Consumer and Regulatory Affairs Subcommittee convened a hearing on government check cashing and low-cost checking. Witnesses at the hearing included Senator Metzenbaum; Howard B. Brown, Banking Commissioner, State of Connecticut; William E. Douglas, Commissioner, the Financial Management Service, Department of the Treasury; Jerome S. Gagerman, President, National Check Cashers Association; Rosemary Dunlap, Secretary, Virginia Citizens Consumers Council; Robert L. Stevens, President, Bryn Mawr Trust Co., on behalf of the American Bankers Association; Richard A. Loundy, Chairman of the Board, Devon Bank (Chicago, IL), on behalf of the Independent Bankers Association of America; John P. Kelly, President of the National Bankers Association; Robert J. Sell, Member, National Legislative Council, American Association of Retired Persons; and Peggy Miller, Legislative Representative, Consumer Federation of America.

In the wake of this hearing, Subcommittee Chairman Dixon attempted to negotiate compromise legislation to require depository institutions to provide government check cashing and low-cost checking services. This compromise effort, however, ultimately proved unsuccessful and no legislation was introduced as a result of it.

In the Spring of 1991, negotiations commenced between the American Association of Retired Persons (AARP), a principal proponent of legislation to require the provision of government check cashing and low-cost checking services, and the Independent Bankers Association of America (IBAA), a principal opponent of such legislation. As a result of these negotiations, the AARP and the IBAA were able to agree to jointly support a legislative proposal (the IBAA/AARP compromise) to require the provision of government check cashing and low-cost checking services by insured depository institutions.

The IBAA/AARP compromise included several innovations that distinguish it from previous bills along similar lines. It permits banks to earn a profit for providing these services of 10 percent above costs. It addresses concerns that such legislation could be unduly burdensome by including no authorization for the issuance of implementing regulations, limiting procedures available for enforcing compliance, and prohibiting both civil liability and administrative fines. It mitigates concerns that the check cashing requirement could give rise to widespread fraud by limiting the requirement to cash State and local government checks to checks issued by the particular State or locality in which the depository institution cashing them is located. In addition, the compromise permits depository institutions to require individuals receiving check cashing services to pre-register for such services, and permits such institutions to deny services to registrants under certain circumstances in which indicia of fraud are present. The compromise permits institutions to institute direct deposit unless the consumer objects. Finally, the compromise permits a consumer to register for and receive, at his or her option, either low-cost checking services or government checking services, but not both.

The provisions of Subtitle C reflect these key elements of the IBAA/AARP compromise. Consequently, Subtitle C differs in important respects from previous bills to require government check cashing and low-cost checking services.

The Need for Legislation

Subtitle C seeks to ensure the availability of essential, affordable banking services to low-income households.

Large numbers of Americans do not participate in the banking system. According to the General Accounting Office, approximately 18 percent of American families—some 16.6 million families in all—do not have bank accounts. Of these families, 4.3 million (26 percent) receive Treasury checks and 3 million (18 percent) receive State or local government checks. Some 7 million families (42 percent of all families without bank accounts) receive at least one regular check from a Federal, State or local government.[40]

The cost of essential banking services appears to be a major reason that so many families do not have bank accounts. In a 1989 survey, the Virginia Citizens Consumer Council interviewed 308 low and moderate income consumers across Virginia. The survey found that the reasons most frequently cited for not having a checking account included inability to save enough to open one and unaffordable monthly fees. Forty-five percent of those without bank accounts said they would open a low-cost account if one were available at a nearby depository institution. Over 75 percent said they would like to be able to cash checks at financial institutions. Similarly, the GAO has found that 56 percent of families without bank accounts have annual incomes of $10,000 or less, and that only 25 percent of families receiving Aid to Families with Dependent Children ("AFDC") benefits have bank accounts.[41] And in a study of 4,842 canceled AFDC checks, the New Jersey Department of the Public Advocate found that 53 percent of the checks were not cashed at conventional banking institutions.

Individuals and families without bank accounts face two major disadvantages in comparison to those who have such accounts. First, they must rely on entities other than depository institutions to cash their checks. Such entities frequently impose very stiff fees. A 1987 survey of check cashing outlets by the Consumer Federation of America found that, on average, check cashers charged $8.47 to cash each $500 government check.

Second, individuals and families without bank accounts must rely on cash to conduct their economic transactions. This reliance on cash places these citizens—many of whom are elderly—at a heightened risk of robbery and theft in comparison to individuals who conduct their transactions through depository institutions.

Several recent surveys have concluded that the costs of retail banking services are rising. A June 1991 study by the Federal Reserve Board noted that "an overall trend toward higher fees for retail banking services" is "readily apparent." [42] In comparing data on retail fees compiled in 1991 with data compiled a year earlier, the Board found that,

> Of the approximately forty comparisons over time involving estimates of average service fees, nearly one-third involved statistically significant changes. Of these, all were cases of fee increases rather than of fee decreases. Further, nearly all cases involving a statistically significant change in the proportion of financial institutions charging for a given service involved an increased incidence of fees.[43]

Similarly, a recent survey of 168 banks in 9 States and the District of Columbia by U.S. PIRG found that the number of banks charging network ATM fees went from 40 percent to 78 percent between

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[40] Written Statement of Richard L. Fogel Before the Subcommittee on Consumer Affairs, 7 (May 18, 1988).

[41] GAO, *Banking: Government Check Cashing Issues,* 2-3 (GAO/GGD-89-12, October 1988).

[42] Board of Governors of the Federal Reserve System, *Annual Report to the Congress on Retail Fees and Services of Depository Institutions,* 1 (June 1991).

[43] *Id.*

1986 and 1991, and that the average fee increased some 29 percent (to $0.84 per transaction) in the same time period. Moreover, some depository institutions have begun charging special surcharges for the use of ATMs in such locations as convenience stores and airports.[44]

Several consumer and public interest groups stressed the need for legislation to address these problems in testimony before the Committee on April 25, 1991. Michelle Meier, Counsel for Government Affairs to Consumers Union, testified:

> The increasing cost of basic banking services, spurred by interest rate deregulation during the eighties, continues unabated. Low income consumers with modest savings simply cannot afford to use banks to store their money and pay their bills safely. The problem will only grow worse as banks pass the increased costs of deposit insurance to those who are already net losers from interest rate deregulation. This problem can no longer be ignored—all Americans should have access to safe and affordable deposit services.[45]

And on behalf of the American Association of Retired Persons, Joan King, Chairperson of the AARP's State Legislative Committee told the Committee:

> Service fees on bank accounts have increased tremendously in recent years, placing banking services beyond the reach of many low- and moderate-income people. For those without an account, paying bills and cashing checks, even government checks, becomes difficult. Personal safety may also be jeopardized. AARP believes that financial institutions should be required to provide individuals access to a minimal level of banking services. AARP, therefore, supports passage of basic banking legislation requiring banks to offer basic, "no-frills" accounts. The Association also supports government check cashing legislation that would require banks to cash government checks, including Social Security and teacher retirement checks for individuals who register with the institution for check cashing services.[46]

The Committee believes that retail fees for essential banking services may increase further in coming years in response to rising deposit insurance premiums and strong pressure on many depository institutions to increase their capital reserves. The Committee is concerned that such fee increases should not raise even higher barriers to participation in the banking system than exist today, and should not force low-income families that now have accounts with depository institutions to abandon those accounts.

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[44] U.S. PIRG, *ATM Fees: Up! Up! Up! Up!*, 1-2 (March 1991).

[45] Written Statement of Michelle Meier before the Senate Banking Committee, 8 (April 25, 1991).

[46] Written Statement of the American Association of Retired Persons before the Senate Banking Committee, 8 (April 25, 1991).

Accordingly, Subtitle C seeks to ensure that essential banking services are available to low-income households at affordable prices.

Key Features of the Legislation

1. Basic Financial Services Account

Subtitle C requires all insured depository institutions to offer a "basic financial services account." To meet the requirements of the subtitle, such an account must permit the account holder to receive, at his or her option, either basic transaction services or government check cashing services without the establishment of any other relationship with the depository institution. (Credit unions may require that the account holder be or become a credit union member).

2. Conditions Permitting Rejection of Application

Subtitle C does not establish an absolute right for consumers to receive basic transaction or government check cashing services. Depository institutions may require individuals wishing to receive such services to apply for a basic financial services account and provide identification. Depository institutions may reject an application when the institution has reason to believe that the applicant has committed or attempted to commit fraud against the institution, has made an intentional material misrepresentation in the application, has a record of writing bad checks, has a credit record of delinquent accounts or unpaid judgments, or has previously had such an account closed because of repeated overdrafts or fraudulent activity.

In addition, subtitle C permits a depository institution to deny an application for a basic financial services account from any applicant who already has a transaction account or a government check cashing relationship with the institution or any other depository institution, or whose annual household income exceeds $20,000.

A depository institution that denies an application to establish a basic financial services account must provide the applicant with timely written notice setting forth both the reasons for the denial and the procedures available to the applicant for filing a complaint.

3. Election of Services by the Account Holder

An individual whose application for a basic financial services account is not rejected may elect to receive either basic transaction services or government check cashing services. Subtitle C does not require a depository institution to make both services available to basic financial services account holders, although nothing in the subtitle precludes such provision of both services.

During Committee consideration of the bill, an amendment was offered that would have modified subtitle C to permit depository institutions to offer only the government check cashing service or the basic transaction account service, at the election of the institution. After debate, the Committee rejected this amendment by a 12-8 vote. The Committee concluded that the requirement that depository institutions offer both the basic transaction account and the government check cashing service is integral to the intent of subtitle C. Not all low income persons have the same needs, and the needs of low-income consumers may vary considerably from one local market to the next, depending on the mix of services already provided by financial institutions serving the market in question. The Committee concluded that only by requiring depository institutions to make both services available, and allowing low-income consumers to choose the service best meeting their needs, can Congress begin seriously to address the problem of access to the financial system for low-income consumers.

4. Basic Transaction Service Account Requirements

Individuals who apply to a depository institution for a basic financial services account, whose applications are not denied, and who elect to receive basic transaction services establish a demand deposit account relationship with the institution. Subtitle C does not fully define the terms of that relationship, but section 534 of the subtitle describes certain of its parameters, setting forth seven standards for minimum service to the account holder and three specific limits on the obligations of depository institutions. The minimum service standards are as follows:

First, the account holder may not be required to make a minimum initial deposit or maintain a minimum account balance of more than $25.

Second, the account holder may be required to pay no more than four types of fees: a monthly maintenance fee; a fee for check printing; a fee for processing checks returned for lack of sufficient funds; and a fee for transactions in excess of the minimum number discussed below, if the institution chooses to permit excess transactions. An institution choosing to impose a monthly maintenance fee must limit the fee to the institution's actual cost of providing the basic transaction service plus a modest profit not exceeding 10 percent of those costs. In calculating its cost for purposes of establishing a monthly maintenance fee, the institution may include any costs of fraud attributable to the institution's provision of basic transaction services as well as the costs of deposit insurance for basic transaction account balances.

Third, the account must permit the account holder to use debit instruments drawn on the account for the purpose of paying third parties. Such debit instruments may include checks, share drafts, electronic, or other debit instruments. However, because the intent of this subtitle is to ensure the availability of banking services to low-income families, many of whom unfortunately lack financial sophistication, an institution that permitted the account holder to pay third parties only by electronic transfer would not meet the requirements of this subtitle.

Fourth, the account must permit the account holder to make at least 10 withdrawals per month, including but not restricted to withdrawals by debit instrument for the payment of third parties. As noted above, an institution choosing to allow more than 10 withdrawals per month could impose an additional fee for each withdrawal in excess of the minimum requirement.

Fifth, the account holder must receive either a detailed periodic statement showing all transactions for the period involved or a passbook in which all such transactions are entered.

Sixth, the account holder must be allowed to receive regularly recurring payments by direct deposit, if the institution offers direct deposit services to holders of full-service transaction accounts.

Seventh, the institution may not absolutely require the account holder to transact business by direct deposit or the use of automatic teller machines. However, the subtitle expressly permits an institution to structure the account so as to impose such a requirement if the account holder does not decline to use direct deposit or automatic teller machines after receiving a clear and conspicuous written notice of his or her right to decline.

The three limits on the institution's obligations under the basic account services relationship are:

First, an institution need not provide basic account services to an account holder whose average monthly balance exceeds $750. The Committee intends that this limit on the basic account relationship be governed by a standard of reasonableness. Subtitle C does not envision that an institution should withdraw basic account services from an individual whose average monthly balance only rarely exceeds $750. On the other hand, it would be consistent with this subtitle for an institution to require that an individual whose account balance often exceeds that amount pay the cost and receive the service associated with the institution's regular, full-service checking accounts.

Second, an institution need not pay interest on basic transaction account balances.

Third, an institution may, upon notice to the account holder, close a basic transaction account if the account has experienced three or more overdrafts, returned checks, or rejected electronic debits in any six-month period, or if there has been any fraudulent activity associated with the account.

5. *Government Check Cashing Service Account Requirements*

Individuals who apply to a depository institution for a basic transaction services account, whose applications are not denied, and who elect to receive government check cashing services, do not establish a demand deposit or transaction account with the institution. In this context, the term "account," as used in subtitle C, has a meaning often associated with it outside of the universe of financial services: an established business relationship between an institution and a customer—specifically, a relationship in which the institution cashes government checks for the customer.

As with basic transaction accounts, subtitle C does not define how a government check cashing services account relationship should be structured. But section 535 sets forth both minimum service standards for account holders and specific limits on the institution's service obligations. At a minimum, a government check cashing services account should have three features.

First, the account must permit the account holder to cash government checks up to $1,500, but only if the account holder presents the check himself or herself and is the person to whom the check has been issued.

Second, a government check cashing services account must not require the account holder to pay any monthly service charge or maintenance fee. The account may, however, entail a fee for cashing government checks not exceeding the actual cost to the institution of providing the service, plus a modest profit not exceeding 10% of that cost. In setting this fee, section 535 expressly permits the institution to take into account any costs attributable to fraud associated with the provision of government check cashing services.

Third, a government check services account must allow the account holder to designate at least three offices of the depository institution at which to cash government checks. But the institution need not allow an account holder to designate any office that does not take deposits, open new accounts, and that is not staffed by employees of the institution.

Section 535 also specifies certain things a depository institution need not do to meet the requirements of subtitle C.

First, an institution need not provide government check cashing services to any person who has not applied for and established a basic financial services account.

Second, an institution need not cash a government check for an account holder who fails to present appropriate identification. As identification, an institution may require an account holder to provide either (i) up to two forms of identification, one of which may include the account holder's signature and the other of which may be the account holder's birth certificate or include a photograph of the account holder; or (ii) an identification card issued to the account holder by the institution.

A final important limitation on the government check cashing obligations of depository institutions under subtitle C resides in section 542, which defines "government check" to include only checks issued by (i) the United States or any agency of the United States; (ii) any state or any agency of any state, and that are presented for cashing within the state in which the check was issued; and (iii) any unit of local government, or any agency of any unit of local government, and that are presented for cashing within the unit of local government in which the check was issued. Thus, checks issued by one state and presented for cashing in another state, as well as checks issued by one local government and presented for cashing in a different locality, are outside the check cashing requirements of subtitle C. In addition, the term government check is defined to exclude checks issued by local government special purpose districts or units.

6. Flexibility to Design Alternative Service Configurations

The Committee has taken care to structure subtitle C in a manner that provides depository institutions with maximum flexibility to structure basic transaction account and government check cashing account service relationships. In particular, the Committee has been sensitive to the needs of the many depository institutions that already provide comparable services. Subtitle C does not require such institutions to reconfigure their present service offerings. On the contrary, section 532 provides that any institution that, on the effective date of the subtitle, is offering basic transaction account or government check cashing services that are, from an account holder's perspective, comparable to or more favorable than the services specified in sections 534 and 535 of the subtitle shall be exempted from the requirement to provide services that meet the letter of the subtitle for so long as the institution continues to provide the comparable or more favorable services.

In addition, the fact that the subtitle does not take effect for at least six months and perhaps as long as nine months after enactment gives depository institutions a window period in which to design for themselves basic transaction and check cashing services that are, from the account holder's perspective, comparable to or more favorable than the services required by the subtitle.

7. Fees

As discussed, subtitle C permits depository institutions to charge fees for government check cashing and basic transaction services up to the amount of their actual costs, including fraud costs, plus a modest profit. The subtitle also permits institutions to self-certify their compliance with this fee limit. At the same time, sections 534(b) and 535(b) state that institutions should "base" their fees for basic transaction and government check cashing services, respectively, on cost studies performed by the Federal Reserve Board.

These requirements should not be read to conflict with one another. In general, the Committee expects that the fees charged by depository institutions will reflect their actual costs. Some institutions, however, may find it less burdensome to rely upon cost studies performed by the Federal Reserve Board than to calculate their actual costs of providing these services. Subtitle C permits such institutions to rely upon the cost analysis of the Federal Reserve Board. In addition, the Committee expects that the Board's cost studies will establish benchmark fees by comparison to which the appropriate bank regulatory agencies could preliminarily evaluate the reasonableness of any complaint that a depository institution is charging excessive fees for services provided under this subtitle. An institution whose fees significantly exceed the benchmark fees established by the Board's studies but do not exceed the institution's actual, demonstrable costs of providing services is not in violation of subtitle C. Similarly, an institution whose fees are in line with the benchmark fees established by the Board's studies, and that has relied on a Board study in lieu of performing its own cost calculation, is not in violation of Subtitle C. But Subtitle C should not be construed to allow institutions to base their fees on the greater of actual costs or benchmark fees established by the Board's studies. An institution may not, therefore, base its fees on the Board's benchmark if internal studies have revealed that a fee based on the institution's actual costs would be significantly lower.

The provision of Subtitle C allowing institutions to self-certify their compliance with the fee restrictions clarifies that Federal banking regulators should not routinely second-guess the validity of fees charged for low-cost checking and government check cashing services. The Committee does not intend this language to bar regulatory investigation of a consumer complaint that such fees are excessive.

8 . Special Rules for Certain Institutions

Sections 537 and 538 of subtitle C provide special rules for certain depository institutions. Section 537 provides that credit unions must provide basic transaction and government check cashing services to any individual who is or becomes a credit union member and who otherwise complies with the requirements of the subtitle. Thus, subtitle C does not affect or conflict with provisions of current law prohibiting credit unions from providing services to nonmembers.

Section 538 exempts depository institutions that do not offer transaction accounts to the general public from having to provide basic transaction services. Similarly, section 538 exempts a depository institution from having to provide government check cashing services if the institution does not, in the ordinary course of business, cash checks.

9. Regulatory Burden and Compliance

The Committee has deliberately structured subtitle C to impose minimal burdens on depository institutions. In this regard, the compliance features of the subtitle are especially significant.

Subtitle C provides only very limited means for enforcing compliance. The subtitle does not authorize the issuance of implementing regulations by the appropriate Federal banking agencies. It expressly precludes any civil liability, including individual or class action causes of action. It also bars the imposition of any administrative monetary penalty. The Committee envisions, and section 540(d) provides, that enforcement would proceed in response to a consumer complaint that a depository institution is not in compliance with the requirements of the subtitle. In response to such a complaint, the appropriate Federal banking agency would investigate and could, should it determine that the complaint is well-founded, enforce compliance through the issuance of a cease and desist order or other procedures available under the statutes cited in section 540(a).

10. Safeguards Against Fraud

In the past several years, many depository institutions have expressed concern that legislation requiring them to provide basic transaction or government check cashing services could expose them to serious fraud. Subtitle C has several features that respond to this concern.

First, as previously noted, the subtitle permits depository institutions to deny service under this subtitle to any individual whom the institution has reason to believe has committed or attempted to commit fraud or who makes an intentional material misrepresentation in applying to open the account, or who has a record of writing bad checks or begins to develop such a record after opening the account.

Second, because the basic transaction services account is a demand deposit account, deposits into such accounts are subject to the anti-fraud protections of the Expedited Funds Availability Act (12 U.S.C. § 4001, *et seq.*). These protections include limits on the institution's obligation to make deposited funds available before the expiration of specified time periods (12 U.S.C. § 4002); additional limits on obligations to make funds available when they are deposited into accounts opened within the preceding 30 days and safeguard exceptions on checks that have been returned unpaid and redeposited and for accounts that have been repeatedly overdrawn (12 U.S.C. § 4003); and discretion for the Federal Reserve Board to suspend, by regulation or order, requirements to make deposited funds available for any class of checks with respect to which the Board determines that institutions have been experiencing unacceptable levels of losses due to check-related fraud.

Third, the subtitle does not require any institution to cash government checks in excess of $1,500. This cap effectively limits the ability of any one account holder to expose a depository institution to significant fraud.

Fourth, section 539(a) of the subtitle authorizes the Federal Reserve Board to suspend any government check cashing services requirement, upon petition by any depository institution, if the Board determines that the institution is experiencing an unacceptable level of losses due to check-related fraud.

Fifth, section 539(b) of the subtitle authorizes the Federal Reserve Board to suspend, by regulation or order, requirements for depository institutions to cash any class of government check under this subtitle if the Board determines that depository institutions are experiencing unacceptable losses as a result of fraud involving that class of checks, or there is reason to believe that such checks are being used in a scheme to defraud.

Sixth, as previously discussed, the subtitle permits depository institutions to refuse to cash checks issued by State and local governments other than the State or locality in which the institutions are located.

Finally, section 543 requires the Federal Reserve Board to study the check cashing services provided under the subtitle to determine the extent of losses due to fraud in connection with such services and report to Congress within eighteen months of the effective date of the subtitle.

SUBTITLE D—MISCELLANEOUS

A. Home Equity Loan Consumer Protection Act Amendment

The Home Equity Loan Consumer Protection Act was signed into law on November 23, 1988. The Act, among other things, requires lenders to disclose key cost terms to borrowers before the execution of a home equity loan contract. On June 9, 1989, the Federal Reserve Board issued its final rule implementing the Act. The rule did not include a requirement for the lenders to disclose the margin, the number of points that are added to the interest rate index to determine the interest rate the borrower must pay on a variable rate home equity loan. Because of this interpretation, borrowers do not receive disclosure of one of the key terms needed to determine the cost of the loan.

Title V amends the Home Equity Loan Consumer Protection Act of 1988 to require lenders to disclose the margin that applies to the plan or plans being offered. The margin is the number of points of interest added to the interest rate index to determine the interest rate the borrower must pay on a variable rate home equity loan.

The 1988 law was designed to give consumers timely notice of the key provisions of home equity loans and to protect them from one sided terms that favor lenders. Among the key terms required to be disclosed by the legislation were the index and margin to which changes in the interest charge were pegged. For example, if a consumer's loan is tied to the Wall Street prime rate plus a two point margin, the consumer needs to know both the index and the margin in order to determine what he or she will be paying. Thus, the Act required the disclosure of "any index or margin to which such changes in the rate are related" for variable rate products.

When the Federal Reserve Board adopted its final rule implementing the Act on June 9, 1989, it excluded disclosure of the specific margin applicable to a loan. Consumers Union challenged the Federal Reserve Board's rule on this and several other matters. On May 2, 1990, in *Consumers Union* v. *Federal Reserve Board,* 736 F. Supp. 337 (D.D.C. 1990), *aff'd on this issue,* No. 90-5186, slip op. (D.C. Cir. July 12, 1990) the Court, among other things, ruled that:

> A literal reading of the statute does not support the plaintiff's position; the literal language of the statute provides that lenders must disclose "a description of the manner in which changes" in the interest rate will be made, including "any index or margin to which such changes in the rate are related" * * * In the normal case, the change in the interest rate of a variable HEL [home equity loan] is not related to the margin but to the index; the margin is generally a fixed figure which will not be responsible for a change in the interest rate. Accordingly, the lenders would only be required to describe how the interest rate would change over time due to the index.

This interpretation eliminated the requirement to disclose the margin, thereby leaving the consumer without one of the key terms necessary to determine what he or she will be paying for the loan. The provision adopted by the Committee is designed to rectify this problem. The Committee's action should not be interpreted to represent a judgment on any other issues that may remain in litigation between Consumers Union and the Federal Reserve Board.

The amendment to the Home Equity Loan Consumer Protection Act contained in subtitle D has been previously considered and adopted by the Committee and the full Senate as part of the Money Laundering Enforcement Amendments of 1990. Unfortunately, however, the 101st Congress did not complete its work on that legislation before adjourning sine die.

B. Directive to Relieve Regulatory Burden

Members of the Committee are aware that many depository institutions believe that various aspects of current law and regulation that seek to protect consumers of financial services, prevent mortgage discrimination, and promote community reinvestment are unnecessarily burdensome. Unquestionably, some consumer protection laws do impose additional costs on financial institutions. But the mere fact of such costs alone does not make them unreasonable. The Committee believes that, in general, the consumer protection laws now in force serve legitimate ends of public policy, and that it is reasonable for depository institutions to contribute toward achievement of those ends.

At the same time, the Committee is sensitive to the argument that some provisions of current law could be implemented as effectively, or more effectively, with less burden to America's depository institutions. The Federal banking regulators should strive to reduce regulatory burden on insured depository institutions wherever it is possible to make such reductions without diminishing the effectiveness of, or compliance with, the consumer protection laws.

To pursue such reductions in regulatory burden, the bill directs the Federal banking agencies to examine current practices to enforce and monitor compliance with a number of current laws that affect depository institutions, evaluate whether those practices result in any burdens on depository institutions that could be reduced without diminishing the effectiveness of those laws, and, if such reductions are possible, take appropriate steps to bring them about. The specific statutes whose current implementation should be reviewed in this manner are the Community Reinvestment Act of 1977 ("CRA"), the Expedited Funds Availability Act, the Electronic Funds Transfer Act, the Home Mortgage Disclosure Act of 1975, the Real Estate Settlement Procedures Act of 1974, the Right to Financial Privacy Act of 1978, the Equal Credit Opportunity Act, the National Flood Insurance Act of 1968, and the Fair Housing Act.

Title V also directs regulators to identify innovative arrangements that can help depository institutions comply with the Community Reinvestment Act and other consumer laws. The Mayor's Challenge Fund of Tampa, Florida provides an example of such an innovative arrangement. The City of Tampa initiated a lending "pool" among federally regulated depository institutions serving the Tampa area to assist in meeting the community's credit needs and to help such institutions comply with the Community Reinvestment Act. The Committee believes that the Federal banking agencies should strive to identify and encourage innovative initiatives such as this. However, that mere participation in such inititatives should not guarantee a depository institution a satisfactory or higher CRA rating. The Federal bank regulatory agencies will, of course, continue to judge the performance of such institutions in accordance with all current CRA assessment factors.

C. Expedited Funds Availability Act Amendment

Congress enacted the Expedited Funds Availability Act ("the Act"), 12 U.S.C. 4001 et seq., as part of the Competitive Equality Banking Act. The Act limits the holds that depository institutions may place on deposited funds by requiring that deposited funds be made available for withdrawal according to specified schedules. The Act also authorizes the Federal Reserve Board to improve the check processing system so that depository institutions would not bear undue risk in complying with the availability schedules. As implemented by Regulation CC, the Act established temporary schedules, which became effective on September 1, 1988, and permanent schedules, which became effective on September 1, 1990.

The Expedited Funds Availability Act established availability schedules depending upon the type of deposit, usage of automated teller machines ("ATMs"), method of withdrawal, and applicability of temporary versus permanent schedules. The Act also requires that various specific disclosures be made to customers.

On February 27, 1991, the Subcommittee on Consumer and Regulatory Affairs held an oversight hearing on the Expedited Funds Availability Act. The witnesses at the hearing were: Wayne D. Angell, Member of the Board of Governors, Federal Reserve System; David T. Wittman, Vice President/Manager, Chase Manhattan Bank, representing both the American Banker's Association and the Consumer Bankers Association; Stephen S. Cole, President, Cash Station, Inc., representing the Electronic Funds Transfer Association; Margaret N. Rectanus, Vice President/Assistant General Manager, Credit Union Products and Services, representing the Credit Union National Association, Inc.; Michelle Meier, Counsel for Government Affairs, Consumer Union; and Edmund Mierzwinski, Consumer Lobbyist, U.S. Public Interest Research Group.

As a result of this hearing, the Committee considered and reported amendments to the Expedited Funds Availability Act, 12 U.S.C. 4001, et seq., in conjunction with the Money Laundering Enforcement Amendments of 1990. Although those amendments passed the Senate, the 101st Congress was unable to complete work on that legislation prior to adjournment.

Title V includes, with minor modifications, the amendments to the Expedited Funds Availability Act previously included in the Money Laundering Enforcement Amendments of 1990. These amendments were added to the Committee Print of S. 543 during the markup as part of a larger package amendment offered by Chairman Riegle in response to concerns that insured depository institutions may face excessive regulatory burdens.

Several technical problems have arisen with the Act since its implementation due to the complexity of its structure and because several anticipated technological breakthroughs have failed to occur. Title V makes four changes to the Act to address these problems.

Availability of cash and certain other deposits at depository institutions and proprietary ATMs.—The Act differentiates between deposits made at depository institutions staffed by employees and at proprietary ATMs, on the one hand, and deposits at nonproprietary ATMs, on the other. The first amendment to the Act relates to the rules governing the availability of cash and certain other deposits at staffed depository institutions and proprietary ATMs. It makes the rules governing availability of cash and other checks that receive next day availability consistent with the rules for Treasury checks and checks drawn on the receiving depository institution ("on us" checks). All these items must be made available for withdrawal on the next business day after the business day of deposit, regardless of whether the deposits are made with tellers or at proprietary ATMs.

The current provisions of the Expedited Funds Availability Act explicitly provide that Treasury and "on us" check deposits must be given next-day availability when deposited at these places. The Federal Reserve Board had recommended allowing Treasury and "on us" checks deposited at proprietary ATMs second-day availability because of its concern that some ATMs are difficult to service on a daily basis. In testimony before the Committee in 1989, the witness for Consumers Union testified that the Federal Reserve Board had misinterpreted the statute in issuing regulations allowing cash deposits and local government and depository checks (e.g., cashier's checks, certified checks, teller's checks) to receive second-day availability if they are deposited at ATMs.

The amendments contained in Title V eliminate this differential treatment between Treasury checks and cash; it requires both to be available on the next day with a limited exception. The Committee responded to the concern that some proprietary ATMs are located in remote areas by authorizing the Federal Reserve to allow an additional day for availability of deposits made at ATMs located in places which are difficult to serve on a daily basis.

Nonproprietary ATM deposits.—The second amendment to the Expedited Funds Availability Act contained in Title V postpones until September 1, 1994, a scheduled change in the rules governing the availability of deposits at nonproprietary ATMs.

Nonproprietary ATMs are shared network ATMs, i.e., ATMs that are not owned and operated by the depository institution in which the customer has an account. Most nonproprietary ATMs do not accept deposits—they merely dispense cash—but some ATM networks do offer this service.

As amended in 1990 by the Cranston-Gonzalez National Affordable Housing Act, the Expedited Funds Availability Act permits all nonproprietary ATM deposits to be treated as if they were nonlocal checks until November 28, 1992 (the conclusion of a two-year period beginning on the date of the Cranston-Gonzalez Act's enactment into law). The 1992 date reflects a compromise adopted by the conference committee between the House position and the September 1, 1994, date adopted by this Committee in its markup of that legislation. By virtue of this amendment, such deposits must be made available no later than the fifth business day after deposit. No differentiation is made among the types of checks deposited in nonproprietary ATMs. They are all treated as if they were nonlocal checks, because processing limitations make it costly for nonproprietary ATMs to differentiate between deposits of government, local and nonlocal checks. After November 28, 1992, the Act currently provides that deposits at nonproprietary ATMs of next-day items and local checks must be made available on the second business day and deposits of nonlocal checks must be available on the fifth business day.

Under the amendments contained in Title V, these new rules will not go into effect, and nonproprietary ATM deposits will continue to be given the same availability as nonlocal checks, until September 1, 1994. The new deadline accords with the deadline previously adopted by this Committee in its consideration of the Money Laundering Enforcement Amendments of 1990, and the National Affordable Housing Act of 1990. The availability period for nonlocal checks diminished from seven days to five on September 1, 1990. This amendment continues five-day availability for all nonproprietary ATM deposits as well.

As amended by the Cranston-Gonzalez Act, the Act currently provides for equalizing the proprietary and nonproprietary ATM rules under the permanent schedule in anticipation that economies of scale and ATM technology might advance sufficiently by November 28, 1992, to permit depository institutions to capture and verify deposit information from the two types of ATMs in the same amount of time. However, depository institutions and ATM network operators have indicated that the industry has not yet identified a viable cost-effective solution to nonproprietary ATM processing limitations. Although the capability does exist to provide information regarding the composition of deposits made at nonproprietary ATMs, the Federal Reserve Board testified in 1989 that all identified solutions are costly and would likely result in increased fees for customers who made deposits at nonproprietary ATMs or elimination of the deposit-taking service. In addition, depository institutions and ATM operators testified that the potential for fraud will increase if institutions must give second-day availability to some deposits made at nonproprietary ATMs. Substantial increases in operating costs or fraud losses would lead many institutions to cease accepting deposits at nonproprietary ATMs, according to industry testimony.

The Committee is optimistic that either computer technology or processing procedures will advance sufficiently by the September, 1994 deadline established by this subtitle, to make shorter availability rules for nonproprietary ATM deposits both feasible and cost effective.

Safeguard exceptions for next-day checks and notice requirements.—The third amendment has two parts. The first part would expand the scope of most of the section 604 "safeguard" exception holds to include deposits of all "next-day" checks, such as government checks and depository checks. Currently, the exceptions for large or redeposited checks to accounts and repeated overdrafts in subsection 604(b) of the Act, the reasonable cause exception in subsection 604(c), and the emergency conditions exception in subsection 604(d) do not apply to some or all of the next-day checks covered in subsection 603(a)(2) of the Act.

According to the Federal Reserve Board, a large number of depository institutions have expressed concern that the inapplicability of these exceptions causes excessive exposure to risk from the return of checks that must be accorded next-day availability. In particular, depository institutions have noted the ease of forgery of government and depository checks. The Federal Reserve Board testified that it is aware of a number of cases of this type of check fraud and believe that fraud will increase as forgers become more familiar with the Act, Regulation CC, and check collection practices.

The second part of this amendment would grant the Federal Reserve Board some flexibility in tailoring the requirements for exception hold notices to the exception invoked. Under current subsection 604(f) of the Act, each time any exception to the schedules is invoked, the depository institution must notify the customer of the exception hold. According to the Federal Reserve Board, such individual notices may be appropriate in the case of the reasonable cause exception, which is invoked on a case-by-case basis, but they may not be appropriate for the large-dollar, redeposited check, or repeated overdraft exceptions. Accordingly, this amendment would allow the Federal Reserve to issue regulations so that account holders repeatedly depositing large dollar amounts would receive a single notice rather than repeated notices. Also, for redeposited checks or repeatedly overdrawn accounts, a single notice could be provided at the time the exception was first invoked, so long as the notice describes the special schedules applicable to the account and the time period for which they apply.

Loss allocation.—The final amendment is even more technical than the preceding three. This amendment would clarify the Federal Reserve Board's ability to allocate liability for losses in the check collection process among depository institutions as well as among other participants in the payments system, such as States and their political subdivisions. Other entities besides depository institutions are involved in the collection and payment of checks. Some States and political subdivisions issue warrants drawn directly on themselves. These warrants are often used to pay employees, vendors, pensioners, and those receiving public assistance. In addition, other nonbank payors, such as insurance companies, draw checks directly on themselves.

Under the Eleventh Amendment to the Constitution, suits against State governments are barred in Federal court unless Congress subjects the States to Federal jurisdiction in unequivocal statutory language. See *Atascadero State Hospital* v. *Scanlon*, 473 U.S. 234 (1985). The current language of subsection 611(f) of the Act does not clearly authorize the Federal Reserve Board to allocate liability for losses, such as those resulting from the mishandling of a returned check, among entities such as States or their political subdivisions or other nonbank payors. This amendment would eliminate this ambiguity by allowing the Federal Reserve Board to impose on, or to allocate, among such entities the risk of loss and liability in connection with any aspect of the payments system, including the payment of checks. Liability under these provisions could then be enforced in the appropriate courts.

The amount of liability in cases against States or their subdivisions would be limited to the damages provided for in this subsection. The amendment would not allow against States or their subdivisions punitive damages or the special class action awards that may be had against depository institutions under subsections 611(a) and (b) of the Act.

D. Truth in Lending Act Amendment

Title V amends the Truth in Lending Act to permit high income borrowers—those who earn more than $200,000 annually or whose assets exceed $1 million—to waive their right to information under the Act. The Committee believes such high income individuals probably have sufficient sophistication to dispense with the Act's protections. This waiver would only be permitted after the borrower has been informed of his or her right to such information through clear and conspicuous verbal and written communications.

E. Homeownership Amendments

Title V modifies a requirement of the Real Estate Settlement Procedures Act ("RESPA") that lenders provide potential borrowers with a booklet on the costs associated with settlement. Under current law, lenders that make federally-related mortgage loans must provide borrowers with a booklet describing and explaining the costs associated with settlement. Each lender must provide this information within three days after an application has been submitted. The amendment to RESPA in Subtitle D would make this requirement inapplicable when a lender rejects an application within three days.

Subtitle D also clarifies the Federal Reserve Board's current interpretation of the Competitive Equality Banking Act of 1987 that only consumer and not commercial loans are subject to adjustable rate mortgage (ARM) cap limitations. Under current law, creditors must establish limitations on the maximum interest rate that will apply to all adjustable rate mortgage loans. The amendment clarifies that the term "adjustable rate mortgage loan" applies only to loans secured by liens on a 1-to-4 family dwelling unit.

F. Disclosure of Lending Data

Title V requires regulators to disclose the data used in assessing a depository institution's performance under the Community Reinvestment Act ("CRA"). The intent of the provision is to bring regulatory enforcement into conformance with changes to the CRA made under FIRREA.

FIRREA requires regulators to prepare a written CRA evaluation for each examined institution and to disclose the "public section" of such evaluation. The public section must: (1) state the regulator's conclusions regarding a depository institution's performance under each CRA assessment factor; (2) discuss the facts supporting such conclusions; and (3) contain a depository institution's CRA rating. Congressional intent under FIRREA was "* * * to promote enforcement of CRA by allowing the public to know both what regulatory agencies are telling depository institutions and what the community reinvestment records of particular depository institutions are." (Conference Report, p. 460)

Representatives of community organizations question the adequacy of regulatory compliance with the FIRREA mandate. They charge that most post-FIRREA CRA evaluations consist almost exclusively of conclusory statements justifying the ratings assigned by CRA examiners and have scant presentation or analysis of any data sources. A Committee review of a random sample of written evaluations prepared by the four regulatory agencies (Federal Reserve Board, Federal Deposit Insurance Corporation, Office of Thrift Supervision and the Comptroller of the Currency) has verified this criticism and prompted this legislative clarification.

The Committee believes that disclosure of the data supporting a regulator's evaluation of a depository institution's CRA performance is central to the CRA process. Disclosure will make it possible for interested parties (e.g. Congress, community organizations, depository institutions, state and local officials) to determine the underlying standards and criteria regulators use to evaluate and rate

CRA performance. Such parties will then be better able to determine how much credibility and weight they should assign to a particular CRA evaluation or rating. The Committee intends that, over time, implementation of this amendment should bring greater uniformity and consistency to the CRA process.

Because the amendment does not require depository institutions to compile or disclose any information they are not already compiling or disclosing under current law, the Committee does not believe the amendment could be a source of any additional regulatory burden to depository institutions. On the contrary, the Committee believes that assigning a more important role in the CRA evaluation process to the presentation and analysis of supporting data should reduce the overall compliance burden imposed on depository institutions. Traditionally, regulators have relied upon a "process-based" approach that tends to reward institutions for compiling extensive documentation on the operational details of their CRA activities, not necessarily for their actual community reinvestment performance. This situation has produced understandable cynicism toward CRA from lenders whose ratings do not reflect their actual community reinvestment activities. Shifting to an approach that is more performance-based should work to reduce this documentation burden.

The Committee also feels that this statutory revision should not pose an undue administrative burden on the Federal bank regulators. The regulatory agencies already have access to a wide range of lending data—including loan information under the Home Mortgage Disclosure Act, lender participation in affordable housing programs, lender investments in community development entities and programs, levels of small business and small farm lending—that form the core of CRA inquiries. The amendment included in Subtitle D merely requires the regulators to present and explain such data—in a uniform and consistent manner—within the written evaluations.

The Committee emphasizes that this statutory revision does not empower the regulators to impose additional data collection and reporting requirements on depository institutions. The regulators might discover, for example, that data for a particular class of depository institutions (e.g. small lenders) or for a particular class of loans are not readily available. This amendment should not be construed as a mandate to require the compilation and disclosure of such information. In such a circumstance, the appropriate regulatory response would be to bring the nature and scope of the "information gap" to Congress' attention, along with an analysis of the advantages and disadvantages of various legislative or administrative options to close the gap.

G. GAO Studies

Title V requires the General Accounting Office to examine the existing requirements that govern the collection and reporting of deposit and lending data by financial institutions. The provision also directs the Comptroller General to determine the extent to which such requirements need to be modified to reflect the shift toward interstate branching. The intent of this study is to determine the necessity of changing current practices to better enable communities to determine whether large depository institutions which have interstate branches are making loans that are reasonably commensurate with the volume of deposits received.

The Comptroller General must conduct a study on the impediments to sound lending in low- and moderate-income neighborhoods and inner cities. The intent of this provision is to determine if current regulatory practices, risk-based capital standards, and underwriting policies of the secondary mortgage market work to discourage lending. The Comptroller General should also examine the policy implications of granting depository institutions various incentives to lend in low- and moderate-income neighborhoods and inner cities.

H. Branch Closing Notification

Current law does not require a bank to give its customers prior notice before closing a branch. Recent bank mergers and acquisitions are increasing the incidence of branch closures. The threat of a branch closure is particularly common and pronounced in underserved, lower-income neighborhoods. Without full banking services, it is difficult for a community to attract new business and economic activity.

30-day notice of branch closing is intended to give customers an opportunity to seek alternative financial services. In special circumstances this notice may enable a community to work with the institution to revive the health of the branch. This provision is not intended, however, to require an unhealthy branch to remain in business.

Therefore title V requires an institution to provide customers at least 30 days notice separately before closing a branch. This notice may be mailed separately or with a monthly statement.

Title VI—Foreign Bank Supervision and Regulation

I. INTRODUCTION

Appropriate regulation of foreign banks operating in this country by the Federal government first emerged as an issue in the 1970's. Obviously regulation of such entities is complex. They come from countries whose regulatory standards and supervisory practices differ from each other and from those of the United States. Prior to enactment of the International Banking Act of 1978, foreign banks were regulated solely by the various states in which they operated. They were not subject to Glass-Steagall Act restrictions on securities activities nor to McFadden Act and Bank Holding Company Act restrictions on interstate branching and banking. The International Banking Act applied these laws to foreign banks operating in this country.

The presence of foreign banks in the United States has expanded dramatically since the 1970's. In 1978, 122 foreign banks were operating in the United States with combined assets of $90 billion. Currently, according to the Department of the Treasury, there are over 294 foreign banking organizations from 60 countries operating over 700 offices in the United States. Foreign banks have taken advantage of the open U.S. market for financial services and become major players in certain regions and segments of the U.S. market.

They account for a substantial share of the export credit, municipal financing and commercial and industrial loan markets. In some cases foreign banks moved into markets less favored by domestic banks, while in others they expanded market share by aggressive pricing. Foreign banks are now a very major presence. According to the Federal Reserve Board, they now control $800 billion of aggregate banking assets in the United States or nearly one quarter of the assets of the American banking industry.

Foreign banks presently operate in this country through representative offices, agencies, branches, and subsidiary banks. There are significant legal and business differences among representative offices, agencies, branches, and subsidiary banks. Representative offices facilitate business contacts in the United States and cannot make loans or accept deposits. Agencies can make commercial and industrial loans, but are generally barred from accepting deposits or making consumer loans. Branches, which are supported by the consolidated capital of the foreign bank, can accept deposits and make loans. Subsidiary banks which are incorporated in the U.S. can be either federally or state chartered and are regulated by the appropriate banking regulator; the Federal Reserve Board regulates the parent company under the Bank Holding Company Act.

Under the International Banking Act, foreign banks have the option of obtaining either a Federal or state license to establish a branch or agency in this country. The majority of the assets controlled by foreign banks are held in state-chartered branches and agencies. For example, of the $800 billion total of foreign bank assets in the United States, $626 billion are in branches and agencies of foreign banks. Approximately 94 percent of the $626 billion in assets of foreign bank branches and agencies are in 489 state-licensed offices while only 6 percent are in 86 federally-licensed offices. In 1990, most state licensed foreign bank assets ($438 billion) were in state licensed branches. Another $90 billion were in state licensed agencies.

Most foreign banks operating in the United States have chosen to operate branches or agencies licensed by either New York or California. Other states where foreign banks have a presence are: Illinois, Florida, Texas, Massachusetts, Georgia, Pennsylvania, Oregon, Hawaii, Louisiana, Washington and Washington, D.C. State licenses are issued without any Federal review of the foreign bank or its management, resources, or operations. The Office of the Comptroller of the Currency does license Federal branches and agencies of foreign banks, which as noted above currently number 76 and hold just 6 percent of foreign bank assets.

SUBTITLE A—FOREIGN BANK SUPERVISION ACT

This subtitle is designed to strengthen Federal supervision, regulation and examination of foreign bank operations in the United States.

A. Background

It has become clear that the International Banking Act's framework for regulating foreign bank operations in this country is imperfect and needs reform. Several recent cases of fraudulent ownership and illegal activities by foreign banks have caused concerns that the present patchwork of Federal and state regulations under the International Banking Act has not kept pace with regulatory requirements. For example, recent revelations about the activities of the Bank of Commerce and Credit International ("BCCI") raised questions about whether foreign banks are receiving adequate supervision in the United States and internationally. It now appears that BCCI's 1990 guilty plea in Tampa to laundering millions of dollars of drug money for deposed Panamanian dictator Manuel Noriega, for which it paid a fine of $14 million, may be but one example of a pattern of illegal activity by that institution. BCCI and its affiliated officials and entities have been indicted by a state grand jury in New York on charges of bank fraud and apparently defrauded depositors around the world. Among other things BCCI is charged with misrepresenting its ownership, capitalization, and financial condition. The indictment also cites fake loans, bribes and larceny.

BCCI is not the only foreign bank that has engaged in illegal activity in the United States. Two former executives in the Atlanta office of Banco Nazionale del Lavoro ("BNL"), Italy's second largest bank, have been indicted on charges that they concealed more than $4 billion in unauthorized loans to Iraq from regulators and their own supervisors. Additionally, LBS Bank-New York, a subsidiary of the Yugoslavian bank Ljubljanska Banka that had close ties to the Atlanta office of BNL, was convicted of money laundering in 1988. In addition, representative offices of the National Mortgage Bank of Greece were found to be taking deposits unlawfully. Both BCCI and BNL were state regulated.

While such cases of illegal activity represent only a tiny fraction of total foreign bank activity in the U.S., they did spur a review of the regulatory supervision of foreign bank operations in the United States. Chairman Riegle wrote to Federal Reserve Board Chairman Alan Greenspan on March 25, 1991 seeking the Federal Reserve Board's recommendations to improve foreign bank supervision. Chairman Greenspan's May 9, 1991 response stated that "[t]he Board has concluded that legislation is needed to strengthen the system of federal regulation and supervision of foreign bank operations in this country." The letter included recommended legislation, which Chairman Riegle and Senators Garn and Kerry introduced as S.1019 on May 9, 1991. The Subcommittee on Consumer and Regulatory Affairs held a hearing on S.1019 on May 23, 1991, at which Federal and local law enforcement authorities, including the Department of Justice and Manhattan District Attorney Robert Morgenthau, expressed support. That bill, with some modifications recommended by the Department of Justice and the GAO, is included as Subtitle A of S.543 and was reported by the Committee on August 2, 1991.

B. Prior Federal Approval Required for Foreign Bank Offices

Foreign banks, as discussed above, currently have the option of obtaining either a Federal or state license to establish a branch or agency in the United States. The Office of the Comptroller of the Currency licenses Federal branches and agencies, which must adhere to most provisions of the National Bank Act. A number of states also permit foreign banks to establish branches and agencies and, as discussed above, most foreign banks have chosen to seek state rather than federal licenses. In addition, New York allows foreign banks to acquire commercial lending companies, entities that accept credit balances and engage in other banking activities and thus are similar to an agency of a foreign bank. Under current law, there is no Federal review of the foreign bank or its management, resources or operations in connection with the issuance of state licenses. Of the states that license foreign bank offices, only two (New York and Florida) even solicit the views of the Federal Reserve Board.

In 1974, the Federal Reserve Board proposed legislation to govern the operations of foreign banks in the United States. A modified version of that proposal ultimately passed Congress as the International Banking Act of 1978. The Federal Reserve, in its 1974 proposal, recommended that every foreign bank receive a Federal license before conducting banking business in the United States. The proposal would have treated branches and agencies of foreign banks as if they were member banks, thereby placing them under Federal Reserve Board supervision. That portion of the Federal Reserve's legislative recommendation was not enacted.

In its legislative proposal of May 9 to the Banking Committee, the Federal Reserve again expressed the view that entry by a foreign bank into the United States should be subject to review at the Federal level to provide comprehensive consideration of relevant Federal issues and to ensure that uniform financial, managerial and operations standards for entry into the United States are applied. The Committee agreed that the current structure whereby, under the International Banking Act, the Federal Reserve has certain responsibilities for the supervision of foreign banks in the United States but no Federal agency has authority to decide which foreign banks should gain entry through state branches, state agencies or even representative offices is unsatisfactory.

Given its responsibility for supervision of foreign banks in the United States, the Federal Reserve should have a role in determining whether such an institution may establish a United States banking presence, or retain it where relevant legal and supervisory standards have been violated. While preserving the dual banking system for foreign banks and the Comptroller of the Currency's role in supervising Federal branches, Subtitle A provides for the Federal Reserve Board to review applications by foreign banks to establish any branches, agencies or commercial lending companies in the United States, whether federally licensed or state licensed. Even if a foreign bank already operates state-chartered branches or Federal branches, any new branches must be approved by the Federal Reserve. Prior Fed approval is also required for foreign banks' representative offices to ensure that these units limit their activities to those they are licensed to pursue and not to engage in unlicensed and unsupervised banking.

Federal Reserve Chairman Greenspan highlighted the importance of this provision in his May 9, 1991 letter to Chairman Riegle.

> Under the [International Banking Act], the Board is given certain responsibilities for the supervision of foreign banks in

the United States, but no federal agency has a voice in the decision as to whether individual institutions seeking to enter U.S. markets through state branches and agencies, commercial lending companies, or representative offices meet the standards generally applicable to banking organizations in this country. The Board believes that it is important that the agency responsible for overall supervision of foreign banks in this country have a role in determining whether such institutions may establish or retain, where appropriate legal and supervisory standards have been violated, a U.S. banking presence. This is a fundamental principle in other areas of federal bank regulation, and, given the size of the operations of branches and agencies of foreign banks in the United States and the importance of these operations to the U.S. banking market, there is every reason to apply that principle to these institutions as well.

C. Standards Governing Entry of Foreign Banks

The legislation also sets forth uniform standards that the Federal Reserve must follow in approving or denying an application by a foreign bank, including requiring an applicant to demonstrate that it is subject to comprehensive supervision in its home country. No foreign bank will be permitted entry to this country if this requirement is not met. This addresses a major contributing factor to the apparent ability of BCCI to operate around the world while disguising its true financial condition: it was not subject to consolidated supervision. In his May 9, 1991 letter Federal Reserve Chairman Greenspan wrote that this requirement

> is of particular importance when dealing with a financial institution that operates internationally because only if the institution is reviewed on a consolidated basis can there be any certainty as to its condition and the extent and lawfulness of its operations.

This subtitle provides that the Federal Reserve must reject an application by a foreign bank to operate in this country if the foreign bank has not provided the Federal Reserve with the information it needs to assess the application adequately. This requirement addresses the problems that might be encountered by the Federal Reserve Board in reviewing an application by a foreign bank such as BCCI which may have an interest in concealing its ownership structure and operations.

In addition to these requirements, the Federal Reserve Board in acting on an application may consider whether the foreign bank's home country regulators have approved the establishment of the United States office; the financial and managerial resources of the foreign bank; whether the foreign bank has provided adequate assurance of the availability of information to United States regulators to determine and enforce compliance of the foreign bank with United States laws; and whether the foreign bank is in compliance with United States laws.

The Federal Reserve Board, however, may not make the size of a foreign bank the determinative factor in its decision to allow a foreign bank to operate in the United States. It should consider the bank's relative size and length of operation in its home country.

Many banks from smaller countries, such as those in the Caribbean area, finance trade with U.S. firms that may not be available from other sources. The Committee is unwilling to see foreign banks from such countries face a disadvantage in the approval process solely because of their size.

D. Enhanced Examination of Foreign Banks

Under the International Banking Act, the Federal Reserve Board has residual authority to examine all foreign bank branches and agencies in the United States. However, the International Banking Act currently requires the Federal Reserve to use "insofar as possible" the examination reports of the FDIC, the OCC and the states. As a result, the various United States offices of a foreign bank are examined at different times and by different regulators.

Given the Federal Reserve's responsibility under the statute for a foreign bank's overall operations in the United States, Subtitle A removes the International Banking Act's requirement that the Federal Reserve defer to other regulators "insofar as possible" in exercising its examination authority. The legislation includes explicit authorization for the Federal Reserve to coordinate examinations of foreign bank offices in the United States, including authority to call for simultaneous examinations of all of a foreign bank's American offices where appropriate. Annual on-site examinations are required, including a review of a foreign bank's worldwide capital level in consultation with the Secretary of the Treasury. This will ensure that Federal regulators obtain an overall picture of a foreign bank's operations in the United States. The Committee, however, anticipates that under the amended statute the Federal Reserve will consult with state authorities and the OCC regarding the frequency and type of examination program for foreign bank offices. The Federal Reserve currently confers with state authorities with respect to state member banks to determine whether examinations are made on a joint or alternate year basis, or whether the Federal Reserve itself will conduct examinations on an annual basis. While the Federal Reserve is authorized to utilize examinations by the Comptroller, the FDIC or state authorities in meeting these requirements, it must itself, in consultation with the Treasury make the capital equivalency determination.

A representative office generally operates as a loan production office for a foreign bank; the office may conduct representational and administrative work on behalf of the bank but no credit or other business decisions may be made at the office or by its personnel. A representative office may not itself conduct any banking activities, including deposit taking, securities trading, foreign exchange dealing, and other similar activities. Currently a foreign bank may open a representative office in the United States without approval by a Federal agency. The relevant state grants the license, after which the foreign bank must register with the Treasury. The Treasury maintains a list of foreign bank representative offices.

Representative offices generally are not examined by a Federal regulator to determine compliance with restrictions on the activities of representative offices. The Federal Reserve does not have the same explicit authority under the International Banking Act to examine these offices as it has over branches and agencies. If a foreign bank has a branch, agency or subsidiary bank in the United States, that branch, agency or subsidiary is subject to examination provisions under the International Banking Act, including of the Bank Holding Company Act. The Federal Reserve could use its authority under the Bank Holding Company Act to examine representative offices of foreign banks that also have an office or a bank in this country. If, however, a foreign bank maintains only representative offices in the United States, the Federal Reserve has no authority to examine those offices.

Recent experience has demonstrated that unlawful activities may be conducted out of unsupervised representative offices. The National Mortgage Bank of Greece, for example, engaged in illegal deposit taking through a chain of representative offices in the United States. The Federal Reserve ordered the bank to terminate the illegal activities and pay a civil penalty. In light of this experience, it would be consistent with the Federal Reserve's oversight responsibilities under the International Banking Act for the Fed to approve and examine representative offices of foreign banks.

Subtitle A therefore amends the International Banking Act to require that foreign banks obtain the prior approval of the Federal Reserve Board in order to establish representative offices. Consistent with its role as the Federal supervisory authority for foreign banks, the Federal Reserve will be the appropriate Federal banking agency for such offices, with authority to examine them for compliance with law and regulation.

E. Authority to Terminate Foreign Bank Offices

Requiring Federal approval for the establishment of foreign banks offices and enhancing Federal examination authority are not enough to make sure that foreign bank operations uniformly comply with United States law. Currently, no Federal agency has the authority to terminate the licenses of any state branches or agencies of foreign banks, even in the case of criminal activities. Termination of the licenses of state branches and agencies remains a matter of discretion for the states. (The OCC has authority to terminate the licenses of Federal branches and agencies.)

This legislation amends the International Banking Act to permit the Federal Reserve to terminate the activities of a foreign bank's branch, agency or lending company if the foreign bank is not subject to consolidated supervision, has committed a violation of civil or criminal law, engaged in an unsafe or unsound practice, or if the continued operation of the office would not be consistent with the public interest or statutory purposes. These standards would cover the situation of an institution that does not have adequate financial or managerial resources or is otherwise unsuitable to maintain a United States office. This termination authority applies to both federally licensed and state licensed offices, including representative offices.

The Federal Reserve Board, however, may not make the size of a foreign bank the determinative factor in its decision to terminate a foreign bank's activities in the United States. Otherwise, as discussed above, foreign banks from smaller countries—particularly banks from developing countries which are relatively small in terms of capital assets—would be at risk solely because of small size. The Federal Reserve Board must consider the bank's relative size, length of operation in its home country, and the effect of the termination on the community's commerce and trade.

F. Foreign Control of Insured Depository Institutions

BCCI acknowledged in March 1991 that it had acquired a controlling interest in First American Bankshares Inc., the largest financial institution in the Washington, D.C. area, without applying for or receiving approval from the Federal Reserve. BCCI had lent money to the purported foreign owners of First American, a group of Middle Eastern investors acting through a Netherlands Antilles holding company. When the borrowers defaulted on their loans from BCCI, they forfeited their First American stock as collateral. Control of First American thereby passed to BCCI.

In approving an investor group's acquisition of First American, the Federal Reserve relied in large measure on personal assurances that BCCI did not have an ownership interest in First American. While these representations were not accurate it is apparent that additional reporting requirements for loans secured by bank stock would have made the misrepresentations easier to detect. Under the Change in Bank Control Act, an insured depository institution and its holding company must report to the appropriate Federal banking agency any loan secured by 25 percent or more of the stock of another insured depository institution if the borrower has not owned the stock for at least one year prior to the loan. The purpose of this requirement is to help ensure that control is not exercised over an institution through bank stock loans.

The current reporting requirement applies only if the loan is made by an insured depository institution or its parent holding company. The requirement does not apply to loans extended by foreign banks that do not operate an insured branch or a bank subsidiary in the United States or to affiliates of either foreign banks or domestic bank holding companies. It is not clear whether the current reporting requirement extends to loans of a group of persons acting together to acquire control of an insured institution.

BCCI's acquisition of control over First American indicates the need to extend this reporting requirement to bank stock loans made by any foreign bank operating in this country as well as to bank stock loans made by an affiliate of such a bank. This situation also indicates the need to clarify that loans by one organization to a group of persons acting together to control a bank must be reported. This expansion of the reporting requirements will better serve the purpose of the statute to monitor the use of loans to control United States banking institutions.

Subtitle A therefore amends the Change in Bank Control Act to provide that loans secured by 25 percent or more of the outstanding shares of an insured depository institution or its holding company must be reported to the appropriate Federal banking agency where the loans are made by a foreign bank that operates in the United States, an affiliate of such a bank, or an affiliate of a domestic bank or bank holding company.

G. Increased Penalties

While most Federal banking laws have been amended to authorize the assessment of civil penalties for violations of law, the International Banking Act has never been amended to incorporate such penalties. To enhance the effectiveness of the regulatory structure of Subtitle A, the legislation amends the International Banking Act to authorize Federal regulators to assess civil money penalties against foreign banks for violations of United States law or regulations in a manner consistent with other banking statutes. It further establishes criminal penalties for certain violations.

H. Cooperation with International Bank Regulators

The Crime Control Act of 1990 permits a Federal banking agency to share information with a foreign banking authority under certain circumstances in connection with an investigation of a violation of law or regulation within the jurisdiction of that authority. As agencies responsible for the supervision of banks operating internationally, it is both useful and appropriate for the Federal banking agencies to be able to share supervisory information with their foreign counterparts in circumstances other than investigations. At the recommendation of the Federal Reserve Board, this legislation clarifies the International Banking Act to provide that the Federal banking agencies may share supervisory information with their foreign counterparts where the disclosure is appropriate in carrying out the agencies' responsibilities and the disclosure would not prejudice the interests of the United States. There also must be an agreement providing adequate safeguards for the confidentiality of the information. This latter requirement is also contained in the Crime Control Act of 1990. As recent events have demonstrated, effective supervision of banks that operate internationally requires coordination and sharing of information among bank regulators of different countries.

I. Authority to Obtain Information on Foreign Bank Operations

The Federal Reserve Board's current discovery and subpoena power with respect to bank holding companies and foreign banks is provided by Section 5(f) of the Bank Holding Company Act. The Federal Reserve also has the same authority under Section 8(n) of the Federal Deposit Insurance Act for institutions for which it is the appropriate Federal banking agency. In both cases the Federal Reserve is authorized to take depositions and issue subpoenas for witnesses and documents. This legislation increases the fine for failure to comply with subpoenas issued by the Federal Reserve Board from $1,000 to $10,000 per day. This legislation further amends the International Banking Act to authorize the Federal Reserve Board, the FDIC and the Comptroller of the Currency to conduct investigations under that Act and to take depositions and issue subpoenas in connection with those investigations. These revisions conform with the current authority provided to the Federal banking agencies under the other banking statutes.

J. Additional Provisions

Foreign bank offices in the United States are currently subject to the various consumer protection statutes applicable to financial institutions, such as the Truth in Lending Act, the Equal Credit Opportunity Act and the Fair Credit Reporting Act. Enforcement authority of such statutes for those offices other than Federal branches and agencies lies with the Federal Trade Commission. The enforcement authority for the Home Mortgage Disclosure Act for foreign bank offices other than Federal branches and agencies is the Secretary of Housing and Urban Development. In contrast, the enforcement authority for domestic banks under the consumer statutes lies with the appropriate Federal banking agency.

While most foreign bank offices in the United States do not operate a retail business and therefore do not make the types of retail loans that are subject to the consumer protection laws, some branches and agencies do engage in some consumer lending. Consistent with the principle that foreign bank branches and agencies should be subject to supervision that parallels the supervision of domestic banks, this legislation centralizes the examination and enforcement function for these foreign bank offices in the appropriate Federal banking agency. This same anomaly exists with respect to Edge Act corporations. As the Federal Reserve Board supervises these entities, the various consumer statutes are amended to make the Federal Reserve Board the appropriate enforcement agency.

Section 3 of the Bank Holding Act requires the Federal Reserve Board to consider, among other things, the "managerial resources" of any company that seeks to acquire a bank and of the bank to be acquired. This standard permits the Federal Reserve to evaluate the managerial capabilities and experience of the company making the acquisition as well as that of the bank to be acquired. A judicial decision in a case involving a foreign individual, however, has raised a question about the ability of the Federal Reserve to deny a proposed bank acquisition under the Bank Holding Company Act based on the character or integrity of a principal shareholder of the acquiring company unless the shareholder proposes to be actively involved in the management of the company or bank. *Security Bancorp* v. *Board of Governors,* 655 F.2d 164 (9th Cir. 1980), *vacated as moot,* 454 U.S. 1118 (1981). In contrast, the Federal Reserve could disapprove a direct acquisition of a bank by an individual under the Change in Bank Control Act, even where the individual does not propose to be directly involved in the management of the bank, if it found that the individual's competence, experience or integrity is suspect.

In order to clarify that the managerial standard in the Bank Holding Company Act currently encompasses the same factors applicable under the Change in Bank Control Act, the Bank Holding Company Act is amended to state specifically that the Federal Reserve Board's consideration of managerial resources of a company or bank shall include consideration of the competence, experience, and integrity of the officers, directors and principal shareholders of the company or bank, whether domestic or foreign, in proposed bank acquisitions.

SUBTITLE B—REGULATION OF FOREIGN BANKS SEEKING EXPANDED SECURITIES POWERS

A. Background

As noted above, prior to enactment of the International Banking Act of 1978, foreign banks operating in the United States enjoyed competitive advantages over their domestic bank counterparts due to differences in regulatory requirements. Restrictions on interstate branching and banking contained in the McFadden Act and the Douglas Amendment to the Bank Holding Company Act did not apply to foreign banks. The Glass-Steagall Act which prevented domestic banks from engaging in most securities activities also did not apply. The International Banking Act changed the regulatory requirements and generally applied interstate branching and banking limitations and Glass-Steagall to foreign banks to the same extent they are applied to domestic banks. That 1978 law, however, grandfathered foreign banks to allow them to retain their then existing interstate branches and securities operations. As of December 1990, 154 branches, agencies and subsidiaries of foreign banks operated interstate under those "grandfather" provisions while another 17 foreign banks continued to engage in securities activities which are not available to their domestic counterparts.

The judgment was made in 1978 that it was best not to force divestiture by foreign banks of banking and securities operations that were legally obtained. However in the context of legislation that will permit U.S. banks to engage in securities powers, it is necessary to ensure that foreign banks neither enjoy competitive advantages nor are denied equality of opportunity to compete.

B. The Treasury Proposal

Section 231 of S. 713, the Administration's banking reform legislation, proposed amending the International Banking Act to provide a new legal framework for securities activities of U.S. and foreign banks. In proposing those changes, Treasury argued that "foreign banks should not receive preferential treatment and that similar requirements should be imposed on both foreign and U.S. banks engaged in the same activities." Under the Treasury proposal, originally contained in the Committee Print, foreign banks engaged only in commercial banking in this country would have been permitted to maintain all their existing branches and agencies without a U.S. holding company structure. Foreign banks, however, that decided to engage in the new securities activities permitted under the Treasury proposal would have been obligated to adopt the same structure required of domestic banks wishing to do the same. In other words Treasury proposed that foreign banks wishing to engage in the securities business would have to establish a bank holding company in the United States and convert existing branch and agency operations into one or more well-capitalized U.S. bank subsidiaries of the holding company. The foreign banks also would have been required to meet the higher capital standards required for U.S. banks to undertake such activities. Treasury's proposal was labeled a "roll up" provision in that it required foreign banks wishing to engage in securities activities to convert or "roll up" their existing U.S. bank branches into subsidiaries of the bank.

The Treasury proposal and the original Committee Print also would have required both U.S. and foreign banking organizations with "Section 20" securities affiliates to choose between discontinuing such securities activities or restructuring as described above within three years. The seventeen foreign banks with International Banking Act grandfathered securities affiliates would have faced a similar decision.

The Treasury Department argued that its proposal gave foreign banks national treatment because it placed identical requirements on both foreign and domestic banks. It contended that if foreign banks were able to engage in securities powers using a different structure and weaker capital standards than U.S. banks, they would have a long term competitive advantage in U.S. markets.

In a July 18, 1991 letter to the Committee, the Treasury stated that continuing the regulatory approach toward foreign bank securities operations permitted under the International Banking Act "could make it difficult to ensure that foreign banks are meeting the strengthened capital standards called for by the Administration's proposal." That letter went on to explain why this difficulty would be present:

> Even with goodwill and substantial cooperation from a foreign regulator these standards might be hard to verify * * * not all countries have subscribed to the Bank for International Settlements accord (Basle Agreement) on risk-based capital standards. Furthermore, there are significant differences in national rules and countries exercise considerable discretion in the actual implementation of the Basle Agreement such that only an equivalence to such strengthened U.S. capital requirements would be acceptable.

The Treasury also stated that requiring foreign banks to convert their existing branches to subsidiary banks as a prerequisite to exercising new securities powers would avoid disputes over the extraterritorial application of U.S. legal requirements on firewalls and capital standards. Treasury's concerns about adverse foreign reactions to extraterritorial application of U.S. capital and firewall provisions was well-founded. Sir Leon Brittan, Vice President of the European Communities wrote to the Committee in March expressing his views on this issue. He stated:

> We note that the Treasury intends to impose capital standards higher than the minimum standards agreed in the Basle Committee of Banking Regulations and Supervisory Practices on U.S. incorporated banks that wish to provide securities or insurance services through subsidiaries of an FSHC. We do not question the right of the U.S. authorities to do this, but we do consider that any attempt to impose higher standards on foreign parent banks as a condition of establishing or operating a branch or agency in the U.S. would be inconsistent with efforts being made by international banking authorities—including U.S. authorities—to facilitate the international activities of banks.

Treasury also argued that requiring foreign banks to establish well capitalized subsidiary banks in the United States before exercising expanded securities powers would avoid such arguments about extraterritoriality and would reduce the level of risk to the financial system as regulators would be able to properly assess the capital adequacy of such subsidiary banks located here.

C. Concerns of the Federal Reserve Board and Others With the Treasury Proposal

Critics of the Treasury proposal, including the Federal Reserve Board, argued that the safety and soundness and competitive equity objectives of the Treasury proposal could be achieved without requiring an identical U.S. corporate structure for foreign banks. In fact some critics argued that the imposition of identical structures, including costly additional corporate structures for foreign banks not contemplated in the approach to foreign bank regulation in the International Banking Act, represented a denial of national treatment. The Federal Reserve argued that its enactment could cause foreign banks to reduce their share of lending in the United States and could contribute to a "credit crunch" in this country. This could result because lending limits for foreign subsidiary banks would be based on the capital of the subsidiary incorporated in the United States, whereas lending limits for a branch of a foreign bank are set by the consolidated capital of the foreign bank as a whole. Although the Federal Reserve admitted that American banks would pick up the slack of any decline in lending by foreign banks, it noted that the cost of loans to the American consumer could go up if the Treasury proposal were enacted.

Additionally, in a July 29 letter to the Committee Chairman Alan Greenspan noted that a majority of the Federal Reserve Board had strong reservations about the Treasury's Section 231 proposal. He stated that it was the majority view of the Federal Reserve Board that the proposal:

> would not enhance prudential supervision of foreign banks in this country, may result in higher costs of credit for U.S. borrowers, may cause problems for the operations of U.S. banks abroad, is not required as a matter of national treatment, and may impair the efforts of the United States to negotiate more open markets for U.S. banks.

The Federal Reserve and other critics of the Treasury proposal also argued that it would lead foreign authorities to enact similar restrictions on branching and other activities by U.S. financial firms doing business abroad and set off a mutually destructive spread of escalating restrictions and retaliatory measures. The Bankers Association for Foreign Trade (BAFT), for example, in a July 19 letter to the Committee stated that Treasury's proposal "could jeopardize existing and future operations of U.S. banks in foreign countries." The Institute for International Bankers, a trade group representing foreign bank interests in the United States, also argued that the Treasury's Section 231 approach would cause foreign banks to move more of their U.S. activities offshore and thereby reduce tax revenue and employment in the United States.

While Chairman Greenspan in his July 29 letter to the Committee stated that the Federal Reserve could not support the Treasury's roll-up requirement, he did advocate other measures to ensure a more level playing field in competition between foreign and U.S. banks in the U.S. financial market. One such measure, he said:

> would require that the Federal Reserve, in acting on an application of a foreign bank to engage in new financial activities, deny the application unless the Board determines that the foreign bank has financial resources, including capital strength, comparable to that required of a domestic institution.

This approach, Chairman Greenspan argued, would permit the Federal Reserve to look at the capital of the entire foreign banking organization, as it does with domestic institutions, in assessing whether the foreign bank has adequate financial resources to support the new activities.

Members of the Committee were concerned, however, about the willingness of the Federal Reserve to hold foreign banks to the same capital standards required of U.S. banks wishing to engage in enhanced securities powers. For example, a 1989 publication of the International Law and Practice Section of the American Bar Association in connection with a conference on "International Banking and Foreign-Bank Operations in the United States" addressed the practices of the Fed in this area. It stated:

> The Fed has not in evaluating BHCA applications specifically held foreign banks to the same capital standards applied to U.S. bank holding companies. For many years the Fed inserted what became a predictable formula in its orders approving an acquisition of a U.S. bank by a foreign bank which complied with the capital requirements of its home country but had stated capital ratios significantly below those required of U.S. banks and bank holding companies. The Fed would reiterate its view that equity generally requires that foreign banking organizations that seek to acquire a U.S. bank should meet the same general standards of strength that apply to U.S. institutions. The Fed would also reiterate its recognition that foreign banks operate under regulatory and supervisory requirements, accounting conventions and banking practices that differ from those that apply to U.S. institutions, and that the differences make direct comparisons difficult. The Fed would typically then find reasons to conclude, with justification, that the applicant's capital strength was greater than a simple balance sheet ratio might indicate and approve the application. This ritual was especially common in orders involving the major Japanese banks. See, *e.g., The Mitsubishi Trust and Banking Corporation,* 72 *Fed. Res. Bull.* 256 (1986). The Fed was doubtless sensitive about the perception that foreign banks received "special" treatment which gave them an advantage over U.S. bank holding companies in acquiring U.S. banks.

Some Federal Reserve Governors have dissented from approvals given by the Federal Reserve Board to foreign banks, noting that the foreign banks had an unfair competitive advantage over domestic banks because their capital was below the Federal Reserve's minimum capital guidelines for domestic banks. Governors Angell and Heller, for example, raised the capital adequacy issue in dissenting from the Federal Reserve's 1986 order approving the acquisition of a Florida bank by a Venezuelan bank. Governor Seger dissented from the Federal Reserve's 1991 order allowing a domestic affiliate of Sumitomo Bank to engage in various securities activities, arguing that "the capital adequacy of foreign banking organizations should be measured without giving these organizations the benefit of adjustments that are not available to U.S. banking organizations." Otherwise, she argued, such "organizations have an unfair competitive advantage over domestic banking organizations."

Additional concerns raised about the Federal Reserve's proposal stemmed from questions about the ability of the Federal Reserve to determine the worldwide capital level of foreign banks.

In that regard, a 1991 Price Waterhouse study on the implementation of the Bank of International Settlement's Basle capital agreement for internationally active banks noted that "significant differences have emerged between national rules on implementation [which] could undermine moves toward a level playing field." The BIS's own 1990/91 Annual Report commented on the difficulties encountered in implementing its 1988 agreed minimum capital standards.

Likewise, a June 1991 article in the *New York Times* entitled "Rosy Accounting At Japan's Banks" anecdotally highlighted the difficulty in determining the actual capital position of Japanese banks.

> "The system is non-transparent in so many areas," said Roger Arner an executive vice president at the Japan Office of Moody's Investors Service. "You have to operate on trust," added Stuart Matthews, an analyst here for Barclays de Zoette Wedd. "We just don't have real numbers * * * nobody is suggesting that these banks are going bust, but it leaves so much uncertainty about their real positions," said Mr. Matthews, the Barclays bank analyst.

These concerns about the Federal Reserve Board's willingness to impose equivalent capital standards on foreign banks and the difficulty of determining such capital levels, particularly of Japanese banks which control more than half of all foreign bank assets in this country, influenced the Committee's decision on how to regulate foreign bank activities in this country so as not to give such banks an advantage over their American competitors.

D. Committee Approach

The Banking Committee wanted to avoid the drawbacks of the "roll up" requirement advocated by the Treasury while ensuring that the foreign banks did not enjoy a competitive advantage with respect to engaging in new activities with less capital and less stringent firewalls than those required of American banks. The

Committee accordingly chose to permit foreign banks to engage in new securities powers through a separately capitalized subsidiary of the foreign bank. Foreign banks would not be required to adopt a U.S. holding company structure and could continue their banking operations through branches. This authorization to engage in new securities powers without a "roll up" of existing branches and agencies, however, is available only for a foreign bank that the Federal Reserve, in consultation with the Treasury, is able to determine has capital equivalent to that required for an American bank engaging in the same activities.

The Committee recognizes that ensuring foreign bank adherence to the same capital standards as U.S. banks is a complex task given differences in national capital standards and accounting practices. There may be cases in which the Federal Reserve believes that a foreign bank is well managed and solidly capitalized and meets the equivalent capital required of an American bank engaging in securities activities but cannot verify it. While the Committee is firm in the view that structural changes in U.S. banking operations of a foreign bank should not be a precondition of expanded securities powers, the Committee has provided the Federal Reserve the authority to require structural changes if necessary. The bill, therefore, authorizes the Federal Reserve to permit expanded powers subject to the requirement, originally proposed by the Treasury, that the foreign bank adopt a holding company structure and roll up its banking activities into one or more subsidiaries if necessary to verify the capital position of a bank affiliated with a U.S. securities firm. This route to expanded powers for a foreign bank is not a back door for under-capitalized foreign institutions which are not well-managed, but is available at the discretion of bank regulators for institutions whose worldwide capital cannot be verified, but in whose management and solvency U.S. regulators have confidence.

The Committee also requires the Federal Reserve Board and the Treasury Department jointly to develop and publish the methodology that will be used in making capital equivalency determinations. This methodology will be publicly available so that persons impacted by such determinations can understand how they are being made. The Committee feels it important to have the Treasury involved in the development of standards for making capital equivalency determinations as the Secretary of the Treasury is the nation's chief financial officer and the Treasury Department is the U.S. Government's lead agency for dealing with international financial issues and has considerable expertise in such matters. Section 3603 of the Omnibus Trade and Competitiveness Act of 1988 already tasks the President or his designee to undertake discussions with foreign governments to, among other things, develop uniform supervisory standards for banking organizations and securities companies, including uniform capital standards. The Secretary of the Treasury has been designated to carry out that duty. Such considerations led the Committee to decide that the Treasury should have a role in developing the standards for capital equivalency determinations and also should have a consultative role in how the Federal Reserve applies such capital equivalency standards in individual applications.

Because the Treasury arguments for bank "roll ups" raised fundamental questions about whether the appropriate mode of operation for foreign banks in the United States should be through subsidiaries rather than branches, the Committee adopted Section 622 of the bill. That provision requires the Treasury Department in consultation with the Federal Reserve, the banking regulators and the Justice Department to conduct a study on this issue. The Secretary of the Treasury is to report to Congress within one year as to whether foreign banks "should be required, as a general rule, to conduct banking operations in the United States through subsidiaries rather than branches." If the study participants agree that international banks should operate in the U.S. through subsidiaries, the Federal Reserve Board is authorized to adopt regulations implementing the change.

Finally, Subtitle B as reported terminates the grandfather authority for foreign banks to engage in securities activities under the International Banking Act. As noted above, the 17 foreign banks that engaged in securities activities before the passage of the International Banking Act were permitted to continue such activities after its passage. Chairman Greenspan expressed the Federal Reserve's support for now terminating grandfathered securities activities:

> The Board believes that it is appropriate to eliminate the current grandfather rights of foreign banks to maintain U.S. securities affiliates if the Congress authorizes securities activities for U.S. banking organizations * * * It would * * * be inequitable to allow foreign banks to operate securities affiliates on a grandfathered basis without regard to the firewall restrictions or capital requirements that would be applied to U.S. competitors.

Foreign banks wishing to continue exercising grandfathered securities powers will henceforth have to meet the capital equivalency requirements adopted by this bill or establish domestic banking subsidiaries if U.S. regulators permit that in instances where they have confidence in the management and financial resources of the foreign bank but cannot verify its worldwide capital level. To ensure that foreign banks also meet the same firewalls as well as capital requirements that would be imposed on banks wishing to engage in securities activities, the Committee also amended Section 8(a) of the International Banking Act to provide that foreign banks should be subject to the firewall provisions of the bill "in the same manner and to the same extent as an insured depository institution." The Committee, while understanding that this provision could raise complaints about an extra-territorial application of U.S. laws that the Treasury hoped to avoid by its Section 231 proposal, adopted it to ensure that foreign banks engaged in securities activities were subject to the same requirements being imposed on their domestic bank competitors. This is needed both for safety and soundness reasons and to ensure equality of competitive opportunity.

A July 19 letter sent to the Committee by the British Embassy suggested that at least some foreign governments would find the compromise developed by the Committee acceptable. That letter stated that the British Government would find broadly acceptable the application by U.S. regulators of higher capital standards on United Kingdom banks that wanted expanded securities powers. It also stated:

> We are prepared to accept that foreign banks, like domestic banks, should establish separate affiliates for securities, insurance and other non-bank services—

Sir Leon Brittan, Vice President of the European Communities, wrote to the Treasury Department on June 11 also pointing out that the concept in the ultimate compromise developed by the Banking Committee avoided the extra-territorial application of U.S. capital standards. He stated that the problem of extra-territorial application of U.S. law could be solved:

> * * * if the appropriate Federal banking agency were given authority in reviewing applications of foreign banks to set up securities or insurance subsidiaries in the United States to consider whether the financial strength of the foreign bank is sufficient and comparable to that required for domestic banks.

The compromise developed by the Committee provides that institutions from countries that do object to an extra-territorial application of U.S. capital and firewall requirements can still have expanded securities powers by incorporating a well-capitalized subsidiary bank here but only if U.S. banking regulators have confidence in the management and financial resources of the foreign bank.

SUBTITLE C—FAIR TRADE IN FINANCIAL SERVICES

This subtitle adopts a reciprocal national treatment approach to trade in financial services for the United States. This changes the current policy of unconditional national treatment and reflects the views of the Committee that the United States must be more insistent on equality of competitive opportunity for our financial firms abroad and more aggressive in international negotiations to achieve such equality. The United States has for almost half a century offered foreign financial institutions national treatment, *i.e.*, the same competitive opportunities that domestic financial institutions enjoy in our market, regardless of how the home countries of such foreign institutions treat U.S. financial institutions that seek to operate there. Many foreign countries do not grant U.S. financial firms similar national treatment. The purpose of this subtitle is to encourage those foreign countries to accord an equality of competitive opportunity to U.S. banks, brokers and dealers, and investment advisers and to end discrimination against U.S. financial institutions in foreign markets.

This subtitle amends the International Banking Act of 1978, the Securities Exchange Act of 1934, and the Investment Advisers Act of 1940. The subtitle is intended to encourage foreign countries to offer United States financial institutions that operate or seek to operate in those countries de facto national treatment, namely the same competitive opportunities (including effective market access) as are available to those countries' domestic financial institutions.

If foreign countries do not provide U.S. financial institutions with an opportunity to compete, including both de jure (in law) and de facto (in practice) national treatment, this subtitle charges the Treasury Secretary to negotiate to obtain it. To strengthen the Treasury's position in any negotiations, the title permits U.S. banking and securities regulators, in consultation with the Treasury, to deny applications for regulatory approval filed by banking and securities firms from countries that discriminate against U.S. firms. Such denials would not force foreign financial firms to shrink their existing operations, but would limit their opportunities for future expansion. Before regulators could exercise the authority given them by this title, however, the Secretary of the Treasury would have to publish in the Federal Register a determination that a foreign country was discriminating against U.S. financial institutions by denying them national treatment. This legislation would not require the Secretary to do so; such action would be purely discretionary. Once the Secretary made a finding of discrimination against U.S. institutions, banking regulators would consult with the Treasury Secretary in making their judgments on applications for regulatory approval filed by institutions from the country practicing discrimination. This legislation would not require regulators to deny any such applications. Rather any such action would be within their discretion in consultation with the Treasury Secretary.

A. History of Subtitle

On January 29, 1990, Senators Riegle, Garn, Dixon, Shelby, Graham, Kerry, Bryan, Heinz, D'Amato, Pressler, and Wirth introduced S. 2028, the Fair Trade in Financial Services Act of 1990, an amended version of which is Subtitle C of Title VI of this bill. The Senate previously passed legislation similar to Subtitle C in 1987 as Title XV of S. 1409, the Senate version of which became the Omnibus Trade and Competitiveness Act of 1988, and again as part of S. 1886, the Proxmire Financial Modernization Act of 1988. The House did not adopt those provisions. On April 5, 1990, the Committee held a hearing on the Fair Trade in Financial Services legislation. The witnesses at the hearing were: the Honorable David C. Mulford, Under Secretary for International Affairs, U.S. Department of the Treasury; David Silver, President of the Investment Company Institute, Washington, D.C.; Eric Hayden, President of the Investor Bank and Trust Company of Boston, Massachusetts; Charles Kim, President of the California Center Bank of Los Angeles, California, who represented the Independent Bankers Association of America; and Guenter Pauli, Chief Executive Officer, European Services Industries Forum, Belgium, and a member-elect of the European Parliament. On May 24, 1990 the Committee reported out an amended version of S. 2028, both as a separate bill and as Title IV of S. 1379, the Defense Production Act Amendments of 1990. The Senate passed S. 1379 and Title IV become Title IV of the Conference Report on H.R. 486. However, the Conference Report was never enacted. In February 1991, the Senate again passed this subtitle as part of two proposals to renew and amend the Defense Production Act (DPA). The bills were S. 347 and S. 468.

B. Background

Recent events have made it clear that a world economy dominated by Cold War confrontation has given way to one of global market competition. If the United States cannot compete effectively in the new global market, our relative economic strength will decline, as will our capacity for world leadership. It is thus important for our country to consider more carefully the economic and trade implications of policies adopted during the Cold War era to determine whether they remain valid in a new age of global economic competition. The Committee is concerned that policies adopted to advance the interests of our nation in a prior age not be adhered to as dogma if they hinder our nation's ability to respond to current challenges.

One area in which the United States is experiencing an increasing competitive challenge is in international banking and finance. During the 1950s and 1960s, U.S. banks dominated the global banking scene as they helped American companies finance their expanding export markets and funded the growth of overseas subsidiaries. In the 1970s, as the economies of Europe and Japan recovered fully from World War II, many foreign banks also began to do business in the United States as companies from their countries expanded their export markets here. The United States, however, had no national policy dealing with the regulation of foreign banks in this country. As a result, American banks began complaining that foreign banks actually enjoyed competitive advantages in their operations here. For example, foreign banks could branch and take deposits nationwide while the McFadden Act prohibited their American competitors from doing likewise.

C. The International Banking Act of 1978

The Congress responded by passing the International Banking Act of 1978, which established the rules under which foreign banks operate in America. That law was designed to establish a level playing field between American and foreign banks in this country. It did not discriminate against foreign banks and even grandfathered some of the competitive advantages they enjoyed. The Senate Banking Committee's 1978 report on that statute stated:

> Foreign chartered banks are accorded operating privileges in the United States which enable them to compete in the United States on terms which equal or exceed the domestic operating privileges of our own domestically chartered banks.

The report went on to state that with enactment of the International Banking Act of 1978:

> The United States has more than abided by the principal of national treatment for foreign banks operating here. * * * In contrast our domestic banks operating abroad have not always received equal treatment in foreign countries with their host country competitors.

The report noted that treatment of American banks abroad varied from country to country.

> European Common Market countries have been most receptive to the benefits of competition brought by American banks to their economies. Japan is a contrast. By the restrictive practices of its officials, American banks are competitively disadvantaged in Japanese banking markets. Not only are American banks limited in their branching abilities, but they are also deterred from soliciting local deposits.

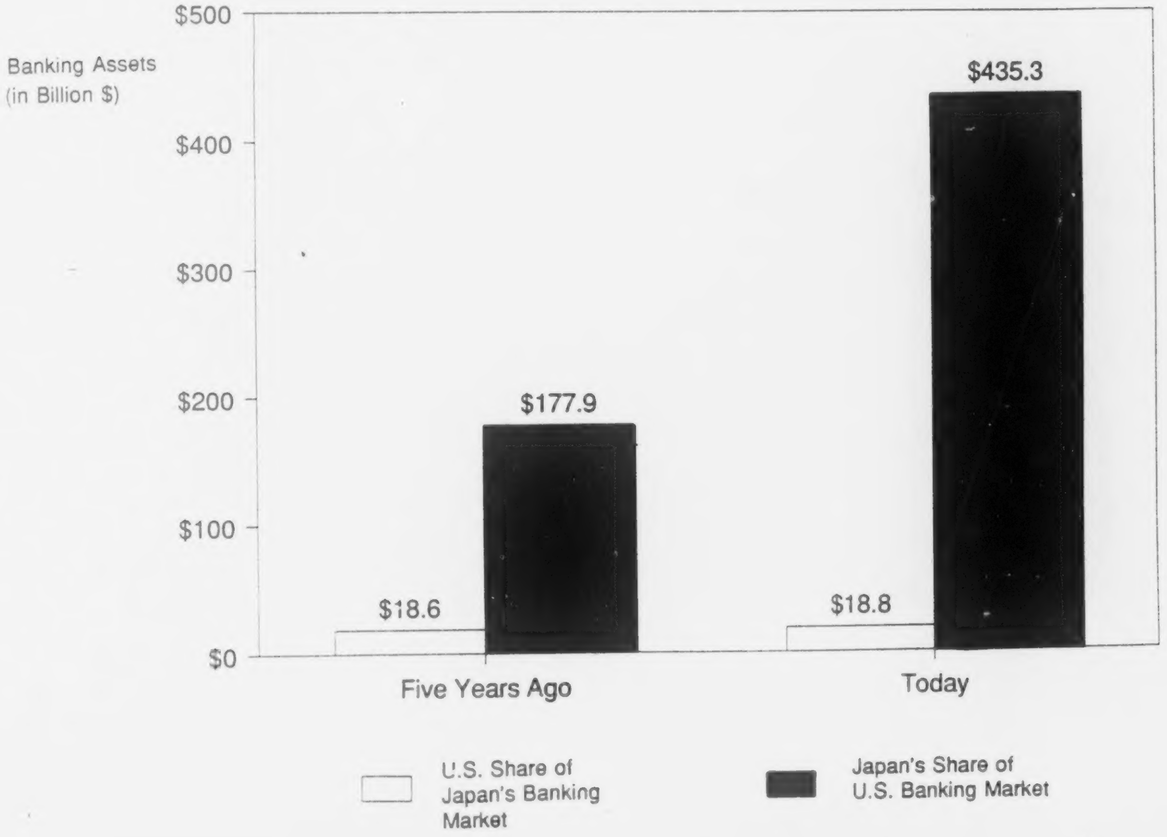
While Congress was concerned in 1978 about the inconsistency between our national treatment policy and the differing policies of some of our competitors, it hoped these matters could be resolved by U.S. negotiators without further Congressional action. It did require the Treasury Department to report to Congress by 1980 on the extent to which American banks were denied national treatment in their banking operations abroad.

In 1978, when the International Banking Act was passed, American banks were still among the largest in the world and controlled the largest share of the international banking market. Two of the three largest banks in the world were American and U.S. banks made over 30 percent of all international loans. Five years later in 1983 U.S. banks still did 27 percent of cross border lending compared to 20 percent for Japan and 31 percent for European banks. But in 1988, U.S. banks did less than 15 percent of cross border lending compared to 38 percent for Japan and 31 percent of Europe. By 1990 the largest U.S. bank, Citicorp, ranked only 21st in the world in asset size.

Foreign banking institutions currently control approximately 25 percent of all banking assets in the United States. As of December 31, 1990, Japanese banks alone had $435 billion of assets in the United States, representing approximately 14 percent of all U.S. banking assets. In some markets such as California, Japanese banks have 25 percent of total assets. Furthermore, foreign bank loans in the United States are growing three times as fast as domestic bank loans. In contrast, the share of banking assets held by American and all other foreign banks in Japan, while never large, has continued to decline. In recent years the U.S. share of the Japanese market has declined from 3 percent to 1 percent while the Japanese share of the U.S. market has increased, as depicted in the Figure A. Foreign banks on the whole have less than a 3 percent share of the Japanese market and that too is in decline.

Figure A

Japan Restricts Its Market While Increasing Its Share of U.S. Market



This subtitle is not based on the premise that a denial of market access for U.S. financial institutions in key foreign markets is the chief cause of these trends. Low national savings and America's macro-economic policies in recent years have contributed to massive deficits in America's current account balances. The demand for foreign savings has assisted the growth of foreign banks in this country and has contributed to the new problems U.S. banks now face in international competition. It is clear, however, from reasons that will be discussed below that a lack of competitive opportunity for U.S. financial institutions in certain important markets has contributed to these trends. The Committee concluded, therefore, that the United States must be more aggressive in ensuring U.S. financial institutions are not discriminated against in foreign markets.

D. Implications of the Declining Stature of U.S. Banks

Concerns have been raised about the future growth and health of U.S. financial institutions and also of U.S. exporters who rely on their financing support. Former Federal Reserve Governor Robert Heller stated in May 1988:

> If American banks disengage from the international arena, American businessmen will have to conquer new export markets without an important ally in the form of their own banks. The loss of that extra competitive edge may be costly in terms of foreign sales.

The Banking Committee voiced a similar concern in its report on the International Banking Act of 1978:

> American banks abroad can and should play a significant role in supporting American exports. The Committee is concerned with the uneven treatment accorded to American banks abroad, particularly in contrast with the open reception foreign banks have been given in our domestic market and its consequent effect on our balance of trade.

At a time in our history when American industry must export more in order to reverse large and persistent deficits in our current account balance, our Government must make sure that our exporters enjoy the support of a competitive international banking sector that is not impeded by foreign market barriers.

E. The Importance of Access to Foreign Markets

Because U.S. banks are facing a severe competitive challenge and their continued strength is critical to the health of the U.S. economy, it is important to ensure that their foreign challengers are not achieving some of their success through reliance on unfair trade practices or discrimination in foreign markets. A key concern is fair access for U.S. banks to foreign capital markets that offer lower cost capital than is available in United States markets.

If U.S. access to such markets is limited or denied, the ability of our banks to pursue a global banking strategy and intermediate between markets is restricted as is access of U.S. borrowers to lower cost funds. If foreign banks, in addition, make use of such funds to penetrate the U.S. market, they will enjoy a unilateral competitive advantage because of the higher profits they enjoy in protected home markets and through their ability to operate with lower spreads in this country. Under Secretary of the Treasury David Mulford spoke to this issue at an April 5, 1990 hearing. He stated:

> I have always had the view that one of the reasons we're in the business of opening the Japanese markets and getting them to liberalize their markets is that there is a very low cost of capital there * * * people have begun to look at the financial area as one in which the Japanese institutions are engaging in sort of an unfair practice because they work off of a cheap source of capital at home and use that, in a sense to expand their position overseas in much the same way that an industrial company might be accused of an unfair trading practice.

Likewise, R. Taggart Murphy, an expert on Japanese financial markets formerly with Goldman Sachs in Tokyo, wrote in "Power Without Purpose," an article which appeared in the March-April 1989 edition of the *Harvard Business Review:*

> Japanese commercial and investment bankers have succeeded overseas partly because of their diligence and attention to detail, but also because they can offer lower spreads and lower fees to borrowers thanks to the profits they enjoy from a cartel-like protected market at home.

When asked whether he agreed with Mr. Murphy's analysis on that point, Under Secretary of the Treasury Mulford stated:

> I have acknowledged repeatedly, including in my *Financial Times* article of November 29, 1989, that Japanese banks have benefitted significantly by interest rate restrictions in Japan. The substantial earnings Japanese banks have acquired in their regulated domestic market have enhanced their ability to pursue market share abroad aggressively.

Other witnesses at the April 5 hearing also emphasized this point. Mr. David Silver of the Investment Company Institute declared:

> There seems little doubt that foreign firms which develop and grow in the sheltered environment of a restricted market may benefit from the existence of a monopoly or oligopoly in their home market. The profits gleaned from growth in this protected environment may provide a significant boost to entry into another market such as the U.S.

Mr. Charles Kim, representing the Independent Bankers Association of America stated:

> Opening foreign markets may also address part of the reason for the extensive presence of foreign banks in the U.S. Some of these countries operate in a protected home market, subsidizing their activities and ability to increase their U.S. market share, and perhaps allowing them to conduct predator acquisitions.

It seems clear that the United States has good reason to be concerned whether its financial institutions receive the same opportunities to compete in foreign markets that we grant foreign financial institutions in our domestic market. This is important not only to help exporters of U.S. goods, but also to ensure that our financial institutions do not compete on an uneven playing field because foreign firms are able to use funding advantages in their own countries, not available to U.S. firms, to compete more strongly here. This issue also could be important for the safety and soundness of our financial system, for if foreign banks use restricted access to cheap deposits or capital to undercut U.S. banks' pricing of loans and services, then U.S. banks are forced to go after higher risk business in order to maintain their profits. This creates increased risks for our deposit insurance funds which are ultimately backed by our taxpayers.

F. The National Treatment Standard

The principle of national treatment, as embodied in the International Banking Act of 1978, requires the Federal government to treat foreign banks in the U.S. the same as U.S. banks. The 1978 Act required the Treasury to report on whether U.S. financial institutions receive national treatment in their operations abroad. The original Treasury report was completed in 1979 and at the request of Congress has been updated three times, most recently in 1990. It was made a permanent quadrennial report in the 1988 Omnibus Trade Bill.

For purposes of the trade bill, national treatment report and future financial services negotiations, "national treatment" is defined in subtitle C to make clear that de jure national treatment reflected in formal laws and regulations is not satisfactory, and that the United States expects de facto national treatment, namely an equality of competitive opportunity with domestic financial firms that is not frustrated by informal practices preventing effective market access. This distinction is needed because the 1986 National Treatment Update Report prepared by the Treasury suggested that while some countries give U.S. financial firms national treatment under their laws, they do not in fact give them equality of opportunity to compete and thus do not give them de facto national treatment.

In 1984, the Treasury, for example, began a series of still ongoing negotiations to persuade the Japanese to open their financial markets to foreign competition. Under Secretary of the Treasury David Mulford, who has conducted these negotiations on behalf of the U.S. Government, noted:

> [S]tatutory restrictions and regulatory practices continue to be a firm barrier to full access by foreign firms to the Japanese financial services industry. The situation invites Congressional action and risks exhausting the U.S. Treasury's patience with the slow evolution of the past six years.

At the Committee's April 5, 1990 hearing, Under Secretary Mulford stated that de jure national treatment must be distinguished from de facto national treatment:

> We firmly believe that it is not sufficient simply to remove blatant discriminatory barriers. Foreign firms should effectively enjoy the same competitive opportunities as domestic firms.

In response to a question from Chairman Riegle about whether Japan provides U.S. financial firms national treatment, Under Secretary Mulford stated:

> I have expressed my concern that barriers still exist which effectively prevent foreign firms from playing on a level playing field in Japan. De jure national treatment does not always result in de facto equality of competitive opportunity.

The legislation reported by the Committee makes clear that de facto national treatment is what U.S. negotiators must seek, and it defines the term to mean the same competitive opportunities (including effective market access) as are available to another country's domestic financial institutions.

Practices in Japan

While subtitle C would give U.S. officials the authority to negotiate for the equality to compete with domestic institutions in all foreign markets, a particular focus of discussion in the hearings and of U.S. Government financial service negotiations has been to seek such treatment in Japan. A range of Japanese domestic banking practices have been cited as having the effect, whether intentional or not, of disproportionately restricting foreign financial institutions and new entrants to Japan's financial markets. The specific Japanese practice that has been most widely cited as denying foreign financial institutions a fair opportunity to compete is the regulation of deposit interest rates. Because of the controls, foreign banks seeking to enter the banking market cannot bid for deposits to establish a deposit base and are disadvantaged in other market sectors by being forced to rely on higher cost funds. Although in the last six years Japan has increased the percentage of deregulated deposits, it continues to regulate many types of bank deposits.

Some other practices that deny foreign firms an equality of competitive opportunity in Japan are:

1. Impediments to developing money market instruments which deny foreign banks an opportunity to fund themselves in domestic yen.
2. Certain laws, regulations, and practices which prohibit Japanese investors from gaining access to foreign markets and impede the entry of innovative foreign products to the Japanese market.
3. Other laws, regulations, and practices which limit the opportunities of foreign firms to manage pension funds and mutual funds in Japan. Speaking on this point Mr. David Silver stated at the April 5, 1990 hearing:

> [A]s regards mutual funds, Japan remains a "closed shop" with no movement toward a free market on the horizon.

4. A lack of transparency. Foreign firms are not given fair opportunities to participate in the process by which the Ministry of Finance develops official policies, regulations, and administrative guidance. Some firms claim that it is hard for them to even obtain clear written statements of the rules or policies once they are decided. Furthermore, the bureaucracy is empowered to "interpret" the law as it deems fit creating fears of arbitrary treatment for foreign firms if they question authoritative interpretations by government officials. Eric Hayden, who represented the Bank of America in Japan for several years, spoke on this issue at the April 5, 1990 hearing. He stated:

> [F]oreign financial firms remain frustrated by the lack of transparency in the process by which official regulations, policies, and administrative guidance are developed and implemented by the Ministry of Finance and the Bank of Japan. Clearly written policies remain the exception rather than the norm, thereby ensuring the bureaucracy monumental power to interpret the law as it deems fit, which includes the ability to intimidate financial firms. One phone call is all it takes to make a point and keep the recipient in tow.

This list of practices is only meant to be illustrative and is certainly not an exhaustive description of the type of foreign practices that this title gives our negotiators the authority to address in Japan, Korea, Taiwan and other markets where U.S. firms are presently denied equality of competitive opportunity with domestic firms.

G. Unconditional Market Access Versus Reciprocal National Treatment

Although the Treasury Department originally had reservations about Subtitle C, its present position is one of not opposing its enactment. Under Secretary Mulford has admitted that most of our major trading partners already have or were moving from unconditional national treatment to reciprocal national treatment policies.

The European Community (EC) in its Second Banking Directive has adopted a reciprocal national treatment standard. Article 9(4) of the final directive adopted on December 15, 1989, permits the EC to retaliate against third countries if its financial institutions "do not receive national treatment offering the same competitive opportunities as are available to domestic credit institutions and the conditions of effective market access are not fulfilled." EC officials have stated that the new Article 9(4) is intended to ensure that the current internationally accepted standard of "national treatment" should work in practice to ensure effective market access in third countries; that is, de facto not just de jure national treatment.

EC officials have acknowledged that their institutions receive de facto national treatment in the United States. This does not mean EC officials will refrain from attempting to negotiate an end to structural barriers, such as the Glass-Steagall Act, that make the U.S. financial market more restrictive than their own. Article 9(3) of the Second Banking Directive provides for such negotiations, but article 9(3)—in contrast with 9(4)—does not provide for any action against U.S. banks if the United States retains restrictions such as the Glass-Steagall Act. Sir Leon Brittan likewise spoke to this point in a May 1, 1989 speech in Phoenix, Arizona to the Bankers Association for Foreign Trade. He stated:

> Where our partners have banking laws which are effectively non-discriminatory, but less liberal than our own, that will be a legitimate matter for negotiation. We will be fully entitled to argue that our most liberal banking market sets an example which our major trading partners should follow. But we would not invoke the lack of equivalent treatment as a basis for retaliation. To be very specific, in the case of United States legislation, there will be no sanctions against U.S. banks in the Community because of the Glass-Steagall Act or any other measures which restrict Community banks' activities here so long as they are genuinely nondiscriminatory between domestic and foreign banks.

H. Leverage for Treasury Negotiators

An important issue related to the increasing reliance of other governments on a reciprocal national treatment standard is the extent to which U.S. negotiators are presently at a disadvantage in negotiating market liberalization abroad.

Witnesses at the April 5, 1990 hearing strongly supported the passage of this legislation in order to give U.S. negotiators increased leverage in their efforts to open foreign financial markets. David Silver of the Investment Company Institute stated:

> Our government should not be obligated to follow a supine policy of granting unconditional national treatment and market access to foreign financial institutions without regard to the treatment of U.S. institutions in the home country of such foreign institutions.

Eric Hayden, who, as noted above, spent over seven years in Japan working for the Bank of America, declared:

> Our government negotiators have long been at a disadvantage in gaining access for U.S. institutions to foreign financial markets because they lack the power to invoke reciprocity. One of the great frustrations of all of us in the expatriate American banking community in Japan was the realization that any hope of change depended in large part on our ability to persuade the Japanese of the benefits to Japan of such change. It was as obvious to the Japanese as it was to us that, despite the support of our government officials, they had no meaningful levers to use on our behalf.

The subtitle reported by the Committee will allow U.S. negotiators to insist that our financial institutions enjoy an equality of opportunity to compete in another country if institutions from that country want similar treatment here.

I. Applying Sanctions to Firms Currently Operating in the United States

While the Committee considered this legislation in 1990, concern was raised about whether existing foreign financial institutions in this country should be given a blanket exemption from any possible restrictions on expansion or new activities, even if their home country were found to discriminate against U.S. financial institutions. Such concern was prompted, in part, in consideration that the European Community's Second Banking Directive provides that EC financial institutions owned by U.S. persons will be free to expand their operations in accordance with EC and Member State laws, even if the United States were to change its present policy and fail to offer national treatment to EC financial institutions. While the Committee was sympathetic to the concerns raised about a grandfather for institutions from countries that had a record of open financial markets, it was not anxious to grandfather foreign institutions from countries that had a history of discriminating against entry by U.S. financial firms.

The Committee therefore provided that the Secretary of the Treasury and the financial services regulators, in exercising their discretion to administer sanctions under the title, should consider, with regard to institutions already operating in the United States, the parent country's record of providing national treatment to U.S. firms. They are also obligated to consider whether the parent country will permit U.S. banks to expand in that country even if the parent country determined that the United States denied its institutions national treatment. The subtitle also provides that any further differentiation of treatment between current participants in the U.S. market and new entrants is permissible insofar as it is consistent with achieving the purposes of the Act. It is recognized that some foreign financial firms have made substantial investments in the United States and provide employment opportunities for American citizens. To achieve its market-opening purposes, the bill provides the regulators with the flexibility to restrict new entrants from a foreign country before denying applications from entities operating in the United States.

The subtitle also directs the Treasury Secretary and banking regulators to exercise their discretion consistent with any obligations the United States assumes under bilateral and multilateral agreements governing financial services entered into by the President and approved and implemented by the Congress. This provision is meant to apply to chapter 17 of the United States-Canada Free Trade Agreement which deals with financial services, or to an agreement pertaining to financial services similar to what is now being discussed in the Uruguay GATT Round. It does not apply to treaties of friendship, commerce, and navigation.

J. Constitutionality

During his April 5, 1990 testimony on the title, Mr. Mulford informed the Committee that the Department of Justice had constitutional concerns about certain provisions which it would address in a separate letter. On April 30, 1990, Bruce Navarro, the Acting Assistant Attorney General for Legislative Affairs wrote to the

Committee asserting that the title's negotiation requirements "impermissibly infringe upon the authority of the Executive to conduct negotiations with foreign countries." The letter quoted from *United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. 304, 319 (1936) to support that contention.

The Committee requested the American Law Division of the Congressional Research Service (CRS) to examine the constitutional concerns expressed by the Justice Department. A CRS memorandum of May 10, 1990, states that the Justice Department's reliance on *Curtiss-Wright* is misplaced and disregards a long history of laws giving negotiating authority to designated officials other than the President. The CRS memorandum confirmed the Committee's belief that the Justice Department's objections lack merit. Copies of the Department of Justice letter and the CRS memorandum were included as appendices to report 101-368 on the Defense Production Act Amendments of 1990.

K. Conclusion

Our national interest requires that the United States be more insistent on equality of competitive opportunity for our financial firms abroad and more aggressive in international negotiations to achieve such equality. This subtitle is designed as one step in a series of measures that our nation will have to take to prepare itself for the new age of global economic competition.

TITLE VII—BANK POWERS AND AFFILIATIONS

Title VII establishes a framework to permit banks and securities firms to affiliate through holding companies. Securities underwriting and dealing would generally be conducted through a "securities affiliate" insulated from the bank (and to some extent, the holding company) by a substantial array of safeguards.

This legislation repeals or amends key sections of the Banking Act of 1933, which are commonly referred to as the Glass-Steagall Act. Title VII is necessary to provide a rational framework for the affiliation of banks and securities firms in place of the patchwork that has resulted from regulatory interpretations.

This title is substantially similar to provisions of the Proxmire Financial Modernization Act that passed the Senate in 1988 by a vote of 94 to 2.

A. The Current Need for Legislation to Modernize our Financial Structure

The market for financial services has undergone substantial changes over the last 60 years. In response to these changes, bank holding companies have applied to the Federal banking regulators for expanded powers. Through decisions on such applications, regulators have allowed bank affiliates an increasing role in securities activities. These developments have greatly undercut the Glass-Steagall Act, which was formerly thought to have created a sharp separation between commercial and investment banking.

Technological change, related innovations in market practice, exploitations of loosely drafted statutory language, and new interpretations of that language by the regulators and the courts have blurred the distinction between commercial and investment banking.

1. *Federal Reserve Board Has Already Eroded Glass-Steagall Restrictions.*

The Glass-Steagall Act prohibits member banks from being affiliated with companies "engaged principally" in securities underwriting, sales and related activities. 12 U.S.C. 377. Glass-Steagall was long thought to insulate banks from the risks of underwriting and dealing in securities. Glass-Steagall's separation of commercial and investment banking has been interpreted by the Federal Reserve Board, and affirmed by the courts, to be incomplete. In recent years, the regulators and the courts have interpreted existing statutes to permit banks to be affiliated with companies engaged in a wide variety of securities activities.

For many years, banks have been permitted to conduct securities brokerage and investment advisory services. In 1986 the Federal Reserve Board allowed bank holding company subsidiaries to provide full service brokerage services (i.e., a combination of investment advice and securities brokerage services) to institutional customers. The Board reasoned, and the courts have agreed, that these services would not constitute a "public sale" of securities within the meaning of Glass-Steagall. *National Westminster Bank PLC*, 72 Fed. Res. Bull. 584 (1986); *Securities Industry Association* v. *Board of Governors*, 821 F.2d 810 (D.C. Cir. 1987), *cert. denied*, 484 U.S. 1005 (1988).

In 1987, the Federal Reserve Board first allowed banks to be affiliated with companies engaged in the private placement of commercial paper. The Federal Reserve concluded, and the court agreed, that Glass-Steagall's prohibition on banks' underwriting securities did not reach private placement activities.[1] See *Securities Industry Association* v. *Board of Governors*, 807 F.2d 1052 (D.C. Cir.), *cert. denied*, 483 U.S. 1005 (1987).

Also in 1987, the Federal Reserve permitted subsidiaries of several of the largest bank holding companies to underwrite and deal in commercial paper, mortgage-backed securities, consumer-receivable related securities, and municipal revenue bonds—securities activities that would be impermissible for a bank to engage in directly. This interpretation was also affirmed by the courts. See *Securities Industry Association* v. *Board of Governors*, 839 F.2d 47 (2nd Cir.), *cert. denied*, 486 U.S. 1009 (1988). At that time, these activities were limited to 5 percent of the subsidiary's gross revenues. In September 1989, the Federal Reserve ruled that a bank affiliate that derives no more than 10 percent of its gross revenues from underwriting or dealing in securities that a bank may not underwrite or deal in directly is not "engaged principally" in underwriting or dealing in securities and so is permissible under Glass-Steagall.

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[1] Having reached this decision, in 1989 the Federal Reserve Board allowed banks to be affiliated with companies engaged in the private placement of all types of securities. *J.P. Morgan & Co.*, 76 Fed. Res. Bull. 26 (1990). The Federal Reserve allowed subsidiary banks of J.P. Morgan & Co. to extend credit to an issuer to pay principal or interest on securities placed by their securities affiliates. The Federal Reserve required that the extension of credit be made at a different time than the securities are placed, indicating that a three-year lapse between a placement of securities and an extension of credit would be sufficient. The Federal Reserve further allowed Morgan to purchase for its own account securities being placed by its securities subsidiary. The Federal Reserve also allowed the bank holding company to purchase up to 50 percent of the issue being placed.

In the Competitive Equality Banking Act of 1987, Congress imposed a moratorium prohibiting bank regulators from granting depository institutions or their affiliates any new securities powers for one year. During 1988, the Senate passed a comprehensive revision of Glass-Steagall, the Proxmire Financial Modernization Act of 1988. While the House Banking Committee approved of Glass-Steagall revision, the full House took no action.

Since the lapse of the moratorium, numerous applications filed by bank holding companies with the Federal Reserve have sought additional securities powers, contending that such activities were consistent with the Glass-Steagall Act. The Federal Reserve Board approved many of these applications, adopting many of the firewall provisions of the 1988 Proxmire bill.

In January 1989, the Federal Reserve granted authority to bank affiliates for the first time to underwrite corporate debt and equity securities. The Board granted applications filed by five of the country's largest bank holding companies: J.P. Morgan & Co., Chase Manhattan, Bankers Trust, Citicorp and Security Pacific. 75 Fed. Res. Bull. 192 (1989). While authorizing these companies' securities affiliates to engage immediately in underwriting and dealing in corporate debt, the Board held that the equity authority could not be exercised until the applicants had demonstrated the requisite managerial capacity, internal controls and capital. The Board determined to review the issue of equity underwriting in one year. By 1990, five banks were among the top 20 United States underwriters of debt securities: J.P. Morgan & Company, Citicorp, Chemical Bank, Banker's Trust, and First Chicago.

In October 1989, the Federal Reserve determined that purchasing and selling securities on the order of investors as a "riskless principal" did not constitute underwriting and dealing in securities for the purposes of Glass-Steagall. *Bankers Trust New York Corp.*, 75 Fed. Res. Bull. 829 (1989). As a result, a bank affiliate may engage in these activities to an unlimited degree: they are not subject to the 10 percent revenue limitation on underwriting and dealing in ineligible securities.

In September 1990, the Federal Reserve Board found that J.P. Morgan & Company had demonstrated the necessary managerial capacity, internal controls and capital to underwrite corporate equities in a subsidiary subject to the 10 percent revenue limitation and the firewall provisions of the Proxmire bill. Once again, the courts affirmed the Federal Reserve's interpretation of current law, holding that equity underwriting by a bank affiliate is not prohibited by the Glass-Steagall Act. See *Securities Industry Association* v. *Board of Governors*, 900 F.2d 360 (D.C. Cir. 1990). In January 1991, the Board granted Bankers Trust similar powers. On March 26, 1991, J.P. Morgan Securities underwrote as co-manager 422,500 shares of a 5,850,000 share offering of common stock by AMSCO International, Inc. This was the first underwriting of equity securities by a commercial bank affiliate in almost 60 years.

Even more recently, the Federal Reserve Board indicated that affiliates of smaller banks may also underwrite corporate debt and equity. On July 9, 1991, the Federal Reserve Board granted an application by Dauphin Deposit Corp., the sixth largest bank holding company in Pennsylvania, to acquire an investment firm engaging in a full range of securities activities.

As a result of these decisions, a bank affiliate may derive up to 10 percent of its revenues from underwriting of corporate equity, corporate debt, commercial paper, mortgage-backed securities, and municipal revenue bonds.

2. Additional Cracks in the Glass-Steagall Barrier.

While the Federal Reserve Board has allowed bank holding companies a greater participation in securities activities, the Office of the Comptroller of the Currency has been pursuing a similar policy for national banks. In 1987 the OCC, acting on an application by Security Pacific National Bank, ruled that national banks may underwrite securities backed by their own mortgage loans. *OCC Interpretive Letter No. 388* (June 16, 1987). The Comptroller reasoned that since the originating bank was merely selling its own assets, Glass-Steagall's ban on bank underwriting of securities was not implicated.

In a March 1988 ruling, the OCC permitted the securities subsidiary of a national bank to buy and sell as agent for the bank's customers real estate limited partnership interests. National banks may participate in networking arrangements with discount brokerages, pursuant to which brokerage service centers are established on a bank's premises. The Comptroller of the Currency has allowed a national bank subsidiary to form a general partnership with an affiliate of an investment bank to finance merchant banking transactions. The regulators reasoned that since the bank controlled only 50 percent of the partnership, the bank was not affiliated with a securities business. The OCC has also allowed a national bank to provide full service brokerage and investment advice to mutual funds.

While Federal regulators have been expanding the securities activities allowed for affiliates of American banks in the United States, American bank affiliates have been underwriting securities all over the world. For years banks have underwritten securities issued in the Euromarkets through their offshore affiliates. In 1985, for example, 11 American banks underwrote about $16 billion of Eurobonds, which is substantial in comparison with the $105 billion of corporate bonds underwritten in the United States.

Another class of banks that can engage in securities underwriting under current law are State banks that are not members of the Federal Reserve System. A number of securities firms have affiliated with these FDIC-insured banks. In his testimony before the Banking Committee in December of 1987, Mr. John Heimann of Merrill Lynch stated, "We already have a bank." In fact, most of the top U.S. securities firms are affiliated with banks. Shearson Lehman Brothers is affiliated with three banks, including Boston Safe Deposit and Trust Company; Goldman Sachs, with Broad Street Bank and Trust; Prudential Bache, with Prudential Bank and Trust; First Boston, with Universal Trust Company; Merrill Lynch, with Merrill Lynch Bank and Trust.

The functional compartments into which Glass-Steagall placed our financial intermediaries have largely disappeared as a result of regulatory interpretation and court decisions.

3. Technological Changes.

Recent developments in computer and telecommunications technology have significantly altered the techniques of financial intermediation. The ability to transmit information quickly and accurately, and to store and analyze that information, has decreased the need for banks as intermediaries and lowered the costs to investors of directly evaluating credit risks. As a result, a greater proportion of the transfer of capital from investor to borrower now takes place through direct issuance of securities by borrowers to investors.

One significant example of this new practice is the development of a commercial paper market as an alternative to bank loans as a source of short-term funding. Commercial paper is a short-term negotiable unsecured promissory note issued for a specific amount and maturing on a specific date of not more than 270 days. Most commercial paper issues have a maturity of 30 days or less. Commercial paper is thus the functional equivalent of a short-term loan: the economic risks and rewards are the same for both facilities.

The gains in efficiency and diversification that are afforded by this securitization of credit provide great benefits to both borrowers and lenders. Yet Glass-Steagall, conceived of before the advent of the commercial paper market, prohibits commercial banks from entering this market. As a result, large corporations that previously obtained credit from commercial bank lenders have now gone to securities firms or directly to the market to issue commercial paper. In 1965 commercial loans by large banks constituted 85.8 percent of all short term borrowing by nonfinancial corporations. By 1986, commercial loans had fallen to 54.0 percent of the total. Over the same period, commercial paper rose from 1.3 percent to 11.8 percent of the same total.

In effect, the traditional customers of banks leapt the Glass-Steagall barrier to obtain benefits that commercial bankers could not provide because of legal restrictions. This is despite the fact that banks have the expertise to provide this new service competitively. Glass-Steagall restrictions prohibit entry by a class of providers who would broaden competition and lower the costs to the borrower in the market for commercial paper.

The proliferation of such innovations as cash management accounts by many of the investment firms is still another example of the inroads that the securities industry has made into the traditional banking function of deposit taking.

As noted above, the Federal Reserve has in the past few years allowed bank affiliates to underwrite and deal in commercial paper to a limited degree despite the Glass-Steagall restrictions. SEC Chairman Breeden spoke favorably of this securities affiliate participation in the commercial paper market in his May 7, 1991 testimony:

> Bank affiliates have become important competitors in several specific product areas, especially the commercial paper market. On the whole, bank affiliates have brought both capital and competition to their securities activities, to the overall benefit of customers and market efficiency. * * * [T]he increased competition seems to have been positive for the overall market. These results also appear to have been achieved without creating any unusual risks to the securities markets or to the banking system.

Technical and financial innovation have affected the market for underwriting services as well, reducing somewhat the risks involved. New instruments and portfolio management strategies that were unavailable just a few years ago have reduced the risk exposure of underwriting. The development of derivative instruments such as futures and options now permits an underwriter to hedge its exposure against the risks of changes in the price of instruments being underwritten. As a result, the underwriter can offset the risk associated with any unsold inventory of a new issue that is underwritten on a firm commitment basis.

4. Glass-Steagall Restrictions May Impair the International Competitiveness of US Financial Intermediaries.

The global integration and operation across regulatory boundaries is itself related to recent technological and market innovations. Diversified firms from many countries now offer a wide array of financial services around the globe.

Some characterize the issue of Glass-Steagall repeal as a zero-sum game between banking firms and securities firms. That characterization is inaccurate precisely because of the increasingly integrated nature of world financial markets.

In most countries, there is no forced separation between banking and securities activity. Since the Bank of England allowed universal banking in 1972, all four major British commercial banks have established or acquired investment banks. Germany and France do not separate commercial and investment banking. Italy has allowed commercial banks to acquire interests in investment banks since 1987. The European Community's Second Banking Directive will allow banks to offer securities services throughout Europe after 1992.

Even in Japan, where the commercial and investment banking industries are legally separated, the restrictions and separation are much less severe than those created by Glass-Steagall. Furthermore, it is now widely anticipated that even in Japan this separation will be removed in 1992 and banks and securities firms will be permitted to engage in both activities.

In addition, as a result of grandfather rights under the International Banking Act of 1978, more than a dozen foreign firms are currently permitted to engage in both banking and securities activities in the U.S. market.

5. *The Structure of the Market for Underwriting Services and the Benefits of Glass-Steagall Repeal.*

Data on the structure of the investment banking industry obtained from the *Investment Dealers' Digest* suggest that there is a substantial degree of concentration in the market for underwriting services. In 1987 the top 5 firms accounted for 68.7 percent of the underwriting of non-convertible debt issues, 95.7 percent of the underwriting of asset-backed debt, 46.4 percent of common stock issues, 49.3 percent of initial public offerings, and 64.9 percent of preferred stock. In municipal finance, the five largest firms accounted for 42.3 percent of all revenue bond issues in 1987. That can be compared to the market for general obligation municipal issues, where the top 5 firms accounted for 31.7 percent. In the latter market banks are eligible to compete even under the restrictions of Glass-Steagall.

Bank affiliates appear to be reducing the level of concentration in the market for underwriting municipal bonds. *Investment Dealers' Digest* determined that for 1990 the securities affiliates of Chase Manhattan and J.P. Morgan ranked 12th and 13th respectively among underwriters as lead managers of all municipal bond issues. The two firms combined served as lead manager for 3.4 percent of all municipal bond issues. The top five underwriters served as lead managers for 39.9 percent of all municipal bond issues.

Data on the extent of concentration in the U.S. dealer market for commercial paper reveal that as of March 25, 1987 the top 5 firms accounted for 95 percent of total obligations outstanding. Based on this data there appears to be substantial reason to believe that new bank entry would diminish market power and reduce the cost to the customer purchasing underwriting services. Additional data from *Investment Dealers' Digest* on average fees as a percentage of the value of an issue reveal that in 1987 the average fee on publicly-traded common stock was 5.62 percent and for initial public offerings was 7.86 percent.

Some studies indicate that the cost of capital to the issuer during an initial public offering may also be raised by another factor—underpricing. Underpricing can be very expensive to the issuer. It helps the underwriter in two ways. First, it makes it easier to place an issue and minimizes the risk that the underwriter will have to tie up capital and carry a portion of the issue in its inventory. Second, the underwriter can make money for its own trading account by holding the issue and selling only after the price rises. Statistics cited by Thomas Pugel and Lawrence J. White in their study of the economics of securities underwriting show that, on average, the initial public offering of new stock is underpriced by over 18 percent as measured by the price in the offer market.

The evidence of the opinion of various consumers of financial services supports those who believe that new competition resulting from Glass-Steagall repeal would produce benefits. There is a broad body of evidence that is in agreement. The Committee's 1987–88 survey of the chief financial officers of the Fortune 500 corporations showed that 77 percent favored repeal of Glass-Steagall. The National Association of Manufacturers has also endorsed Glass-Steagall repeal. These two groups constitute the major consumers of corporate debt and equity underwriting as well as commercial paper underwriting.

The National Association of Home Builders has suggested in hearings before this Committee that a consumer will save nearly $1,000 over the life of a $100,000 mortgage because of increased competition in the market for underwriting mortgage-backed securities.

State and local governments believe that they would benefit as well. The National Governors Association, the National Conference of State Legislators, National League of Cities, National Association of Counties, U.S. Conference of Mayors, and the Government Finance Officers Association all supported the Proxmire Financial Modernization Act of 1988, which would have permitted banks to underwrite and deal in municipal revenue bonds. It was estimated in 1988 that such an increase in competition could have saved State and local governments as much as $480 million in 1986. Savings would be translated directly into lower State and municipal taxes. The provisions of title VII are substantially similar to those of the Proxmire Financial Modernization Act of 1988.

6. Summary

The argument for legislation to rationalize our financial structure is strong. Regulatory and court decisions have eliminated many of the barriers between commercial and investment banking. The barrier separating commercial banks from investment banks has been perforated in both directions. Finally, changes in the technology and practice of financial intermediation have rendered the restrictions of Glass-Steagall increasingly ineffective and obsolete.

Former Federal Reserve Board Chairman Paul Volcker expressed his views for the Committee on May 8, 1991:

> Assuming appropriate protections, I see no excuse for any longer prohibiting well qualified, strongly capitalized bank holding companies from participating in the main lines of investment banking * * *

These same sentiments were expressed by numerous other witnesses who appeared before the Committee, including representative of the banking trade organizations, the Securities Industry Association and the Investment Company Institute.

B. Appropriateness of Glass-Steagall as a Response to the Financial Crisis of the 1930's

Some economic and legislative historians who have examined the genesis of the Glass-Steagall Act raise doubts whether the separation of commercial and investment banking was a necessary or desirable response to the financial calamities of the Great Depression. The architects of the legislation appear to have been heavily influenced by the hearings on stock exchange practices conducted by this Committee through its chief counsel, Ferdinand Pecora. The Pecora investigation in the Senate provided detailed testimony on the self-dealing and other market abuses engaged in through securities affiliates by some officers of certain large money center banks.

While eliminating these well documented abuses was a high priority for legislators, the findings of the Pecora hearings did not establish that the complete separation between commercial banks and investment banks was either a necessary or appropriate response to the problems.

First, abuses by commercial banks that were engaged in securities activities were not different in kind, or in degree, from the abuses that the Pecora hearings found securities firms to have been engaged in over the same period.

Second, Congress enacted legislation to address the specific abuses and conflicts of interest involved in the combination of banking and securities activities. This legislation included the Securities Act of 1933, the Securities Exchange Act of 1934, and section 23A of the Federal Reserve Act. The Securities Act creates affirmative duties to disclose information about a securities offering and prohibits the issuance of misleading prospectuses on a securities issue. The Securities Exchange Act outlawed stock manipulation. Section 23A restricts transactions between a member bank and its affiliates. These additions to our financial laws have remedied many of the deficient market practices exposed by the Pecora hearings without any of the anticompetitive costs.

Third, some proponents of Glass-Steagall have argued that restricting the activities of a banking organization is necessary to maintain depositor confidence in the banking system. Proponents assert that restricting the activities of the bank and its affiliates and the asset composition of the bank's portfolio would reduce the likelihood of bank runs. This argument is undercut by the establishment of the Federal Deposit Insurance Corporation in 1933, as part of the Banking Act of 1933. The FDIC guarantees depositors' funds regardless of the composition of the bank's asset portfolio, and thus prevents runs on banks. Federal deposit insurance, and not the Glass-Steagall restrictions on affiliations, appear to be the cause of the stability of our banking system.

In retrospect, the more fundamental reforms growing out of the financial crisis of the 1930's, such as the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, and strengthening of the Federal Reserve Act each appear to have enhanced the integrity and functioning of our financial system. Each was addressed to a particular problem and has stood the test of time and practice. The Glass-Steagall separation does not appear to have been an essential component of that series of structural reforms designed to restore stability to our credit allocation process. In particular, the Glass-Steagall affiliation restrictions differ from those other reforms in that these restrictions did not appear to address any of the primary causes of the Great Depression.

C. Committee Action

Rationalizing the current system under which banking and securities operations can be conducted jointly requires explicit provisions to guard against conflicts of interest and threats to the safety and soundness of the financial system.

The centerpiece of the action taken by the Committee is the creation of a structure within the holding company framework to permit banking and securities affiliates to coexist. The holding company structure, together with further explicit inter-affiliate restrictions, provides the required insulation between the bank and the securities affiliate to promote financial system stability, protect the safety and soundness of banks affiliated with securities firms and deny bank securities affiliates an unfair funding advantage because of their association with an insured deposit-taking entity. The legislation includes additional provisions designed to guard against conflicts of interest and ensure that banks continue to make impartial lending decisions. Anti-tying and disclosure provisions are also included to protect bank customers and securities investors from confusion.

1. Separation of Banking and Commerce

A. Historical Separation of Banking and Commerce

S. 543 maintains the traditional separation of banking and commerce in the United States. From colonial times onward, banks have generally been restricted to accepting deposits, making loans and related activities. The separation of banking and commerce was embodied in the national bank system established by the National Bank Act of 1864, which specifically forbids banks to engage or invest in commercial or industrial activities. ("Except as hereinafter provided or otherwise permitted by law, nothing herein contained shall authorize the purchase by the association for its own account of any shares of stock of any corporation." 12 U.S.C. § 24).

When the rise of bank holding companies opened the possibility of combination of banking and industrial firms, Congress passed the Bank Holding Company Act of 1956 to restrict such combinations and limit bank holding companies owning two or more banks to financial activities. This policy was strengthened by the Bank Holding Company Act Amendments of 1970, which restrained the investment in nonbanking enterprises by all bank holding companies. This policy was supported by Republicans as well as Democrats: in 1969 the Nixon Administration in submitting the Bank Holding Company Act amendments advocated maintaining the separation, saying "the strength of our banking system depends largely on its independence. Banking must not dominate commerce or be dominated by it."

B. Reasons to Retain Separation of Commerce and Banking

The concerns that in the past led Congress to separate banks and commercial firms are just as valid today. As former Federal Reserve Board Chairman Paul Volcker told this Committee on May 8, 1991, "the line should continue to be drawn * * * between banking and commerce. * * * [T]he overriding public policy interest remains strong." In a letter to Chairman Riegle dated July 17, 1991, Mr. Volcker reiterated that "no case has been made, in the broad public interest, for changing the long U.S. tradition in that respect." The GAO and CBO both testified against the idea. Comptroller General Bowsher told this Committee on March 7, 1991 "GAO does not believe that encouraging commercial companies to acquire banks is necessary for creating a safe and sound banking system." CBO Director Reischauer agreed that "[n]o convincing arguments have been advanced to indicate that there are major advantages to be achieved by ownership that combines banking and nonfinancial activities."

1. *Undesirable Concentration of Resources.* The combination of banking and industry would lead to an undesirable concentration of economic resources. Such concentration would threaten the diversity and free competition that characterize our economy. Henry Kaufman, the respected economist whose career in banking and finance spans almost 40 years, notes that the dangers of monopoly in the banking industry are particularly great in view of the crucial role banks play in the American economy. In an editorial page essay he predicted that allowing commercial ownership of banks "would eventually produce a corporatist type of state, in which power is concentrated in fewer decision makers, free markets are suppressed and economic dynamism is stifled." (*Washington Post,* 2/17/91). As Gerald Corrigan, President of the Federal Reserve Bank of New York, testified,

> If commercial ownership of banking organizations becomes widespread, there is a danger that the resulting concentration of economic—and perhaps even political—power could have subtle but serious implications for monetary policy.

Banks are the primary means by which the central bank carries out its monetary policy; commercial firms are the targets of monetary policy. Commercial ownership of banks will make it more difficult for the central bank to achieve its monetary objectives. Allowing commercial giants to acquire banks will lead to the formation of a small number of entities dominating the American economy, in contrast to our history of diversity and competition. Sherry Ettleson of Public Citizen predicted in her April 25, 1991 testimony that the allowing of commercial firms to purchase banks "would inaugurate a frightening spasm of economic concentration that would dwarf the fraud-ridden and wasteful merger-mania of the 1980's."

2. *Bank Conflicts of Interest.* Banks play a crucial role in promoting economic growth and efficiency by granting credit impartially. Independent credit decisions based on objective evaluations of creditworthiness are the basis of effective banking. Banks owned by industrial companies, on the other hand, would experience conflicts of interest. Banks owned by commercial firms would be likely to make credit decisions on the basis of what benefits the organization rather than what is most creditworthy. They would have an incentive, if not a compulsion, to extend credit to nonbanking affiliates to the detriment of other competitive businesses. The arm's length relationship between bankers and borrowers would be compromised.

As Paul Volcker testified, the savings and loan crisis presents "ample evidence of the dangers of insured depository institutions * * * becoming involved in one particular line of business—real estate development." Herbert Sandler, the chairman and chief executive officer of World Savings and Loan Association of Oakland, California, made the same point in his May 22, 1991 testimony. He stated

> [i]t would be unwise to permit commercial or industrial companies to own commercial banking organizations. We have seen what happens when commercial real estate interests gain control of thrift institutions. The same disaster could occur on a much larger scale if Congress were to allow any type of company to own a bank.

When real estate developers acquired control of thrifts in the 1980's, those thrifts funded enormous amounts of real estate speculation. Had those thrifts instead exercised sound credit judgment, losses to the taxpayer as a result of the savings and loan crisis may have been much lower. A banking system in which credit is allocated based on affiliations and relationships rather than economic potential will reduce overall economic efficiency.

3. *Unfair Competition.* An industrial company could use an affiliated bank to compete unfairly with companies that do not have access to captive banking resources. Parent companies would use low cost federally-insured deposits to subsidize the funding costs of their nonbanking operations, rather than securing funds at higher cost in the capital and credit markets. Herbert M. Sandler, Chairman of World Savings and Loan Association of Oakland, California, told the Committee on May 22, 1991 that

> it is naive to think that most commercial or industrial companies would invest capital in banks or thrifts for the return on equity. Instead, the commercial acquirer's rationale for buying a bank or thrift is likely to be the access to a cheap source of funds from insured deposits.

In addition to subsidizing its parent, the bank could favor the industrial company's customers while discriminating against its competitor's customers. The bank would have an incentive to lend to its parent's retailers, suppliers and manufacturers. Henry Kaufman, warned the Committee on May 15, 1991 that a

> large corporation that controls a big bank would use it for extending credit to those who can benefit the whole organization. The captive bank would attract low-cost funds through insured deposits and would deploy them to finance retailers, jobbers, manufacturers and individuals who further the distribution of the parent's products and services. The bank would be inclined to withhold credit from those who are, or could be, competitors to the parent corporation.

Indeed, Federal Reserve Bank of Chicago examiners found that a commercial bank controlled by a non-financial corporation prior to the 1970 amendments to the Bank Holding Company Act concentrated lending to suppliers of that corporation.

A captive bank might deny credit to competing firms or extend credit to borrowers on the condition that they do business with the parent company. Bank customers may believe, rightly or wrongly, that they must purchase nonbanking services from the organization. Attempts to restrict such lending would be difficult to implement in practice, given the number and diversity of suppliers and customers that have relationships with industrial firms. Evaluating the possible preferential nature of these loans would be a laborious task for bank regulators at a time when supervisory resources are already stretched thin. In addition, bank examination can only catch these improper loans after they have been made and the damage is done, not before.

Since credit is critical to business operations, a company that can offer a line of credit to finance its sales has a distinct competitive advantage over those that cannot. The experience of Japan, where groups of commercial and industrial firms are organized in cartels around large banks and prices are much higher than in the United States, demonstrates that what is good for industrial giants is not necessarily good for consumers or small businesses.

4. *Unsafe and Unsound Practices.* Banks enjoy certain privileges within the American financial system. They benefit from Federal deposit insurance, access to the payments and liquidity facilities of the central bank, and the implicit seal of approval that results from government regulation. In return, banks have a responsibility to conduct their affairs in a safe and sound manner. Commercial firms, in contrast, do not share these benefits or responsibilities. Links between banks and commercial firms could undermine banks' adherence to their responsibilities and lead to unsafe and unsound banking practices. Banks would be tempted to lend money to finance speculation in the stock of the parents or to finance their parents' speculative ventures. Banks might be used as a source of dividends by a parent company experiencing operating losses. Banks could further seek to require their customers to purchase their parents' products or services.

William Taylor, nominated to be Chairman of the FDIC after years of experience as a bank regulator, testified at his confirmation hearing on September 24, 1991 that he was opposed to ownership of banks by industrial corporations. He explained that the "credit-granting process must indeed be as independent as possible" and that the potential for abuse resulting from commercial ownership of banks was "too great to accept."

C. Not Needed to Increase Capital.

The way to attract capital to the banking industry is to increase its profitability. There is no reason to believe that allowing industrial companies to acquire banks would increase the capital of the banking industry. As Gerald Corrigan, the president of the Federal Reserve Bank of New York, pointed out in testimony before the Banking Committee in June 1987,

> it is by no means clear that the only way, or the best way, to [bolster bank capital] lies with permitting commercial firms to acquire and control insured depositories. Indeed, it is not even clear that permitting commercial firms to make such investments would materially augment the true capital base of the banking industry. * * * [C]apital will be attracted only by underlying profitability. Merely permitting commercial ownership of banks would seem to do little to change that unless the owners were permitted to push extensive interrelationships which is the very source of my concern.

Appearing before the Committee again in May of this year, Mr. Corrigan testified that he remains "steadfast in * * * opposition to commercial ownership or control of banking institutions."

It is important to note that a commercial firm may already make passive equity investments up to 24 percent in any number of banking or financial entities so long as it does not achieve control over the institution. A commercial firm can acquire up to 5 percent of the stock in a bank without even having to disclose the investment. The benefits of such a passive relationship are not great, however. Historically, banking is not on average more profitable than other lines of business. Commercial control of banks would only serve those companies that would use access to the bank for their own purposes. Allowing industrial companies to acquire failing banks would achieve short-term resolution cost savings only at the expense of long-term public policy dangers.

An industrial firm will not acquire an unprofitable bank unless it is motivated by something other than profits, such as a desire to fund its operations with insured deposits. This is exactly the sort of behavior this bill seeks to prevent. In May of this year, Paul Volcker testified that a commercial firm, prevented from looking to a bank for mutual support, would not invest in an unprofitable bank.

> The basic plea—that commerce-banking combinations are needed to bring adequate capital resources to banking—suggests a degree of imperfection in U.S. capital markets for which no evidence is advanced. A banking organization with ample competitive opportunities and reasonable prospects for profits should be able to attract capital in the open market. If banks do not have such prospects, it seems to me highly unlikely that a commercial firm, prohibited by strong firewalls from even the hope of synergies and from more than arms-length control, would want to make such investments. If contrariwise, the objective of such commercial ownership is to seek synergies, to undertake joint marketing, and to look toward mutual financial and other support, then all the concerns about concentration, unfair competition, and abuse of the safety net are plainly relevant.

Capital is already entering the banking industry in record amounts. Data supplied to the Committee by the Federal Reserve Board and the Securities Data Corporation indicated that while banks raised $3.2 billion in 1989 and $1.8 billion in 1990, banks raised $4.13 billion in new capital in just the first five months of 1991. Testifying on May 15, 1991, Henry Kaufman said "[o]wnership and control of banks by large commercial and industrial firms are not necessary for attracting needed new capital into the industry."

D. Dangerous Expansion of Deposit Insurance

Bank holding companies are subject to government supervision as an integrated enterprise. In comparison to banks, commercial firms are unregulated and unsupervised for safety and soundness purposes. Government regulators do not scrutinize even the existing credit operations of industrial firms such as General Electric and AT&T, because they are not connected to the deposit insurance system. Because the bank cannot be fully insulated from the commercial firm, commercial ownership of banks would extend the Federal deposit safety net to include other activities. Gerald Corrigan testified in May that "there is no question that the risks of the extension of the safety net more generally to the commercial owners of banks would increase" if commercial firms controlled banks. Any such extension of the Federal safety net when the Bank Insurance Fund is empty for all practical purposes would amount to reckless disregard for the exposure of the taxpayers. In his April 26, 1991 testimony, Comptroller General Bowsher asked the Committee to "think about the mega-bailout you would be looking at if Chrysler or Lockheed in the past owned a big bank."

E. International Experience

Commercial ownership and control of banks is very rare in other countries. New York Fed President Gerald Corrigan highlighted for this Committee on May 3, 1990 that "in no other major countries are banks, as a general matter, owned and controlled by commercial companies." Some countries, notably Germany, allow banks greater flexibility in holding equity interests in commercial enterprises than does the United States. Even in these countries, the trend is to limit such relationships. Felix Rohatyn and Lloyd Cutler pointed out on April 26, 1991 that "in Europe and Japan, the existing interlocks between banks and industrial groups are beginning to be pried apart. This is no time for the U.S. to take the opposite road." In Germany, the German Monopolies Commission and the Academic Advisory Council of the German Finance Ministry have recommended that German banks be prohibited from holding more than 5 percent of the stock of any industrial or commercial firm. This is the same limitation currently contained in the Bank Holding Company Act.

Peter Cooke, the chairman of Price Waterhouse's World Regulatory Advisory Practice, noted on June 20, 1990 that "[t]he Bank of England has discouraged banking/commerce links because of a concern that the bank may be treated as an in-house bank by a dominant parent in unacceptable ways" such as channeling depositor's funds in the bank to finance the parent's business. Jeffrey Chisholm, Vice Chairman of the Bank of Montreal, gave the Committee a Canadian perspective on this issue at the same hearing. He stated:

> [M]aintaining the independence between financial and commercial sectors is of fundamental importance. Deposit taking institutions are entrusted with depositors' money. This is akin to a fiduciary responsibility and strict precautions are required to avoid the hazard of depositors' money finding its way into excessively risky industrial and commercial purposes through highly complex and obscure intra-company transactions.

F. Conclusion

As CBO Director Reischauer told the Committee on March 5, 1991, "[n]o convincing arguments have been advanced to indicate that there are major advantages to be achieved by ownership that combines banking and nonfinancial activities." Many convincing arguments have been made in opposition. Sharon Bush of ACORN summarized those arguments in her April 25, 1991 testimony.

> Allowing commercial firms to own banks opens the door to manifold conflicts of interest, greater taxpayer exposure, and increasing concentration in the financial and industrial sectors. It is a recipe for chronic and unprecedented financial instability.

2. The Holding Company Structure and the Securities Affiliate

The bill repeals section 20 and amends section 32 of the Glass-Steagall Act to codify the framework already used by the Federal Reserve Board in allowing commercial banks to be affiliated with securities firms. The framework builds on the Bank Holding Company Act of 1956, which regulates companies that control commercial banks and the nonbank subsidiaries of those companies. At the heart of the new framework is the "securities affiliate"—a nonbank subsidiary of the bank holding company carefully insulated from the bank (and to some extent the bank holding company).

Allowing securities activities to be carried out through holding company affiliates of a bank is much sounder than allowing subsidiaries of the bank to engage in a full range of new securities activities. The temptation for the bank to support an ailing subsidiary would be very strong given that the bank's consolidated balance sheet would directly reflect the securities activity. In addition, the holding-company approach also helps keep the bank's decisionmaking separate from that of the securities affiliate—and thus promotes independent credit judgment.

The Administration took the same view of the problem in 1983 and 1984, when Congress considered legislation to grant new bank powers. The Secretary of the Treasury testified before the Committee that "the Administration believes strongly that the holding company structure is the only acceptable means of expanding nonbanking activities." The Secretary then stated emphatically that the Administration did not believe

> that nondepository institution activities should be conducted through a subsidiary * * * in which a bank or thrift has a direct equity investment. Such bank or thrift investments would be at risk if the subsidiary's activities were to falter, and the subsidiary's cost of capital would be lower as a result of Federal assistance not available to competitors. Neither problem arises if the holding company approach is adopted.

A further consideration, which reinforces the choice of the holding company structure, is the recognition that permitting several different forms of bank affiliations with securities firms could lead to a competition in regulatory laxity, as each regulatory agency sought to make its structural alternative more attractive to regulated institutions. Such competition could, over time, significantly erode the safety and soundness protections of the banking system.

Several academic observers have upheld this view. Robert E. Litan, in his book *What Should Banks Do?*, summarizes the case:

> Requiring all nonbank activities to be operated within a holding company structure would end the growing disparity between the range of nonbank activities open to bank holding companies, which the Fed regulates, and those open to state-chartered banks in certain states where banks may directly engage in nonbank activities not approved for bank holding companies. More important, the holding company approach, however imperfect, is more likely to prevent deposit insurance from subsidizing nonbanking activities, as would occur if banks were allowed to invest directly in nonbank enterprises. In the holding company mechanism, the nonbank activities do not appear on the asset side of the bank's balance sheet; under the alternative structure, they clearly would. Finally, requiring that financial activity diversification proceed only through the holding company mechanism would vest agencies at the Federal level with all responsibility for supervising the transactions and affiliations between the nonbank and bank activities. This requirement would minimize jurisdictional overlaps between state and Federal agencies, as well as unnecessary duplication in overseeing nonbank activities in which depository organizations may be engaged.

3. Inter-Affiliate Restrictions ("Firewalls")

Like the Proxmire Financial Modernization Act passed by the full Senate in 1988, S. 543 contains important restrictions on the relationship between a securities firm and its affiliated bank or parent bank holding company. Restrictions are needed to promote the bank's safety and soundness by ensuring the bank makes impartial credit decisions. Bank credit decisions should not be affected by concern for the securities affiliate's reputation affiliate or the success or failure of a particular activity by that affiliate. A securities affiliate should not enjoy an unfair competitive advantage over other securities firms. In the absence of restrictions, a securities affiliate could unduly benefit from the lower cost of funds available as a result of Federal deposit insurance protection. Restrictions are also required to ensure Federal deposit insurance does not extend to the securities affiliate.

While this Committee is ready to promote efficiency and competition in the provision of financial services, it has no intention of extending the scope of deposit insurance coverage when the Bank Insurance Fund is virtually insolvent. The securities affiliate must conduct its business based on its own ability to withstand risk, without regard to insurance coverage. In addition, bank customers and securities investors must be protected from confusion over the scope of Federal insurance.

To achieve those ends, S. 543 accordingly contains certain provisions known as "firewalls" to protect banks' insured deposits and prevent conflicts of interest. While stringent, the firewalls contained in S. 543—as amended during markup—are more flexible than those in the Proxmire Financial Modernization Act passed by the Senate in 1988. Such flexibility is appropriate, given the experience banks have had since 1988 exercising the greater securities powers the Federal Reserve has allowed them as discussed above. The Federal bank regulators similarly are more experienced in supervising the exercise of securities powers by banks.

The following are among the most important provisions governing transactions between a bank and its securities affiliate. While the bill provides certain exceptions to these provisions, the exceptions are carefully designed to avoid a risk to the deposit insurance fund. Exceptions are not automatic: they require the approval of the Federal Reserve Board and in most cases apply only to well-capitalized banks. The bank's exposure to the securities affiliate is limited to a fraction of the bank's capital. Moreover, some exceptions are available only if unaffiliated lenders participate in the transaction, demonstrating the arm's length nature and business purpose of the transactions.

Under the first firewall provision, a bank generally may not extend credit to a securities affiliate; issue a guarantee, acceptance, or standby letter of credit for the benefit of the securities affiliate; or purchase for its own account financial assets of the securities affiliate. A few limited exceptions to these general prohibitions promote efficient operations at minimal risk to the bank.

A bank may purchase from its securities affiliate United States government securities or investment-grade, market-to-market securities—sound investments that pose no threat to the institution's safety and soundness.

A well-capitalized bank may extend credit to a securities affiliate during a calendar day in the course of clearing securities. The securities being cleared must serve as collateral for the extension of credit. Moreover, if the securities are not United States Government or agency securities, the securities affiliate must provide the bank with whatever additional collateral or assurance of performance the Federal Reserve Board determines is necessary so that the transaction poses no appreciable risk to the bank. Beginning 3 years after the bill becomes law, the Federal Reserve Board may allow extensions of credit for overnight clearing of securities.

The Federal Reserve Board has discretion—within narrow limits—to allow a well-capitalized bank to extend credit to or purchase assets (other than United States Government or agency securities) from a securities affiliate. These transactions must be fully secured in accordance with section 23A of the Federal Reserve Act. The aggregate amount of all such transactions with securities affiliates may not exceed 5 percent of the bank's capital. This means that even a bank whose capital is 20 percent of assets—far above the current industry average—could devote only 1 percent of its assets to transactions with its securities affiliates. This minor exception to the general rule prohibiting transactions between a bank and a securities affiliate gives a bank a modicum of flexibility in its operations at minimal risk to its safety and soundness. It is considerably more stringent than section 23A, which limits a bank's transactions with any one affiliate to 10 percent of the bank's capital and with all affiliates to 20 percent of the bank's capital.

The general prohibition will help keep insured deposits from being placed at risk in speculative ventures. Securities affiliates must absorb their losses with their own capital. They will not be kept afloat by insured deposits in the form of a bank loan or guarantee. They must bear their own risks for their investment decisions and compete in the marketplace.

Second, a bank generally may not extend credit—or enter into a standby letter of credit, asset purchase agreement, guarantee or other facility—for the purpose of enhancing the marketability of securities underwritten by a securities affiliate. The Federal Reserve Board may allow a well capitalized bank to enter into such a transaction with an issuer of securities underwritten by its securities affiliate, but only within strict limits. In no case can the aggregate amount of all such facilities exceed 40 percent of the bank's capital. Any extension of credit or other action associated with an underwriting of securities that the bank itself could underwrite (such as general obligation municipal bonds) will count toward the 40 percent limit at one-half its dollar amount. The bank can enter into such an extension of credit or other transaction only if there is substantial participation by unaffiliated lenders: the bank may not supply more than the greater of 25 percent of the total facility or the amount provided by an unaffiliated lender. These restrictions are designed to ensure that securities underwritings succeed based on the affiliate's evaluation of the market rather than its access to insured funds. Securities underwriting will remain outside the scope of the Federal safety net.

Third, a bank generally may not extend credit for the purpose of purchasing securities being underwritten by a securities affiliate. The prohibition extends to any security that is the subject of a distribution in which a securities affiliate has participated as an underwriter or member of a selling group in the previous 30 days. The Federal Reserve Board may allow such extensions of credit by a bank holding company or any subsidiary other than an insured depository institution. This exception is available only to healthy organizations: the bank holding company must be adequately capitalized and its insured depository institutions must be well capitalized. Further, if a bank's securities affiliate is not a principal underwriter or principal member of a selling group and all of its securities affiliates have less than a 15 percent interest in the distribution, the Federal Reserve Board may allow an insured depository institution to extend credit for the purchase of securities underwritten by the institution's affiliate. In such a situation the bank has little or no incentive to risk its own funds to prop up an underwriting.

Fourth, a bank generally may not extend credit to an issuer of securities underwritten by a securities affiliate for the purpose of paying principal, interest, or dividends on those securities. The Federal Reserve may allow a well capitalized bank to extend credit to an issuer to make payments on securities underwritten by its securities affiliate. (As discussed above, since 1989 the Federal Reserve has allowed banks to extend credit to make payments on securities placed by an affiliate.) Under a "market discipline" test similar to that discussed above, unaffiliated lenders must participate substantially in the transactions. The bank may not provide more than the greater of 25 percent of the total extension of credit or the amount provided by an unaffiliated lender. In the absence of such a provision, a bank may have an incentive to make such loans in order to preserve the reputation of its securities affiliate. An underwriter should not reap a competitive advantage merely because it is affiliated with a bank. A bank should not be prevented from making such a loan, however, when other indications attest to the soundness of the transaction.

Fifth, an individual generally may not serve simultaneously as a director or senior executive officer of an insured depository institution and as a director or senior executive officer of a securities affiliate. This will help ensure that bank officers act in the interest of the bank. In order not to burden small banks, the interlock prohibition does not apply if the insured depository institution and all affiliated depository institutions have assets of $500 million or less. The Federal Reserve Board may also make exceptions to the interlock prohibition, but may not permit a majority of the directors of one entity to be directors or senior executive officers of the other entity.

Sixth, the securities affiliate must make certain written disclosures emphasizing that securities sold, offered, or recommended by the securities affiliate are not insured deposits.

Seventh, the bank may not express any opinion on the value of or the advisability of purchasing or selling any securities that are being underwritten or dealt in by the securities affiliate unless it informs the customer of the securities affiliate's role.

Eighth, the bank may not disclose nonpublic information about a customer to the securities affiliate and the securities affiliate may not disclose such information to the bank without the customer's consent. Nonpublic information about a customer does not include the customer's name or address, information that could be obtained from credit bureaus, or information customarily provided to credit bureaus by insured depository institutions or brokers and dealers.

Ninth, a securities affiliate initially may not underwrite securities that are secured by or represent an interest in mortgages or other obligations originated by the bank unless they are rated by an unaffiliated, nationally recognized rating organization. Beginning one year after enactment the Federal Reserve may allow a securities affiliate to securitize non-rated obligations of the bank. As discussed above, since 1987 the OCC has allowed national banks to securitize their own loans. S. 543 moves this activity to the securities affiliate.

An additional provision further ensures that bank deposits are not put at risk by securities activities. A ban on reciprocal arrangements prevents one bank holding company and its subsidiaries from engaging in transactions with another bank holding company and its subsidiaries for the purpose of evading any restrictions on transactions between bank holding company affiliates.

The holding company structure, firewall provisions, disclosure requirements, and prohibitions on reciprocal arrangements are designed to promote competition in the provision of financial services while preventing abuses that would diminish efficiency, investor protection, or the soundness of the system.

4. Application Procedure

In order to acquire a securities affiliate, a bank holding company must be adequately capitalized. Each of its insured depository institution subsidiaries must be well capitalized. Both the bank holding company and its insured subsidiaries must be well-managed (i.e., have received a management rating of 1 on the 5-point CAMEL system, or the equivalent under a comparable system). A bank holding company's acquisition of a securities affiliate (whether a newly formed company or an existing broker or dealer) is subject to a net-public-benefits test parallel to that in section 4(c)(8) of the Bank Holding Company Act. The test requires the Board to weigh the anticipated public benefits of the proposed acquisition such as increased competition, greater convenience, or gains in efficiency against possible adverse effects such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices.

5. Capital Standards for Bank Holding Companies With a Securities Affiliate

Under the bill, a bank holding company's investment in a securities affiliate must be deducted from the bank holding company's capital in determining whether the bank holding company complies with capital standards. Thus, even if the bank holding company were to lose its entire investment in the securities—to take an extreme case—it capital compliance would not be affected. The bill also curtails a bank holding company's ability to engage in double-leveraging to circumvent holding company capital standards.

6. Concentration Limits

To insure that repeal of Glass-Steagall results in new competition rather than in financial sector concentration, the bill prohibits mergers between bank holding companies with assets of more than $35 billion and securities firms with assets of more than $15 billion. In the case of U.S. firms, this provision would stop mergers between the 15 largest bank holding companies and the 15 largest securities firms. Furthermore, it would stop large foreign banks and securities firms from combining with the large U.S. firms.

Numerous witnesses have pointed out the need for concentration limits. Notes former SEC commissioner Stephen J. Friedman, "It would not be desirable for Morgan Stanley, Salomon, Goldman Sachs and Merrill Lynch to each be acquired by a major bank. But it is hard to see why it would not be very pro-competitive for major banks to compete with those firms" Even former FDIC chairman William Isaac identified the importance of limiting concentration in our financial industry with appropriate understatement: "Making sure that there are plenty of alternative means of gaining access to credit is more important than making sure you have, say, plenty of choices of beer."

The limits contained in this bill are designed to inhibit development of mega-financial service firms that could translate the benefits of consolidation into monopoly profits rather than into greater competitive efficiency. Economic studies confirm that financial industries with lower levels of concentration foster competition and growth. Studies by Herbert Baer and Sue Gregorash for the Federal Reserve Bank of Chicago, along with the International Monetary Fund, show that countries with less concentrated financial industries experienced stronger overall growth. The five largest banks in the United States have never accounted for more than 19 percent of total banking assets. In Japan, the five largest have never controlled more than 32 percent. These two countries have led the world in economic growth. By contrast, the five largest banks in the United Kingdom constitute 73 percent of total bank assets. In France, the five largest have accounted for as much as 87 percent. Among developed countries, these two have traditionally lagged in overall economic growth.

Prohibiting undue concentration helps assure that credit will be extended fairly and across a wide spectrum of activities. This is of particular importance to small and regional borrowers who fear that they would be overlooked by financial goliaths. Such a development would hamper the dynamic flexibility that has been the hallmark of this country's success for two hundred years.

7. Securities Powers

The bill permits a securities affiliate to underwrite and deal in a full range of securities. In addition, the bill authorizes a securities affiliate to conduct (1) other securities activities that are permissible for SEC-registered brokers, dealers, or investment advisers (e.g., brokerage, private placement, and investment advising); and (2) other nonbanking activities that are permissible for bank holding companies (e.g., leasing, mortgage banking, management counseling, and financial counseling).

A securities affiliate must be registered with the SEC as a broker or dealer and is fully subject to SEC regulation. The principle of functional regulation is thus maintained. A bank holding company must conduct any underwriting or dealing activities through the securities affiliate. The only exceptions are certain activities that are permissible for national banks (e.g. underwriting U.S. Government or State and local general obligation securities).

8. Securities Affiliations of FDIC-Insured Banks

To ensure that statutory safeguards are observed in all cases, title VII establishes a general rule for the affiliation of all FDIC-insured banks, whether members of the Federal Reserve System or not. Except as provided by new section 10 of the Bank Holding Company Act as added by this bill, an FDIC-insured bank may not be affiliated with a company that acts in the United States as an underwriter or dealer of securities other than certain eligible securities. This prohibition does not apply to trust company banks, credit card banks, or industrial banks.

A grandfather provision allows an affiliation that existed between an FDIC-insured bank and a securities underwriter on July 15, 1991 to continue. Such a bank may also enter into new affiliations. Any other affiliation that becomes unlawful as a result of this bill may continue until 2 years after enactment of the bill.

9. Securities Activities of National Banks

Title VII recodifies section 5136 of the Revised Statutes (12 U.S.C. § 24), which sets forth the corporate powers of national banks, conforming its format to the rest of the banking laws. The restatement and reorganization of section 5136 makes no substantive change in the existing law and is not intended to alter, ratify, or supersede any of the Office of the Comptroller of the Currency's regulations, orders, or interpretations of that section. Consequently, the restatement does not affect any court decisions based on a provision in, an interpretation of, or a regulation or an order issued pursuant to section 5136. The intent of the restatement in title VII is strictly to make section 5136 easier to read and comprehend.

In addition, title VII provides that a national bank that has not been affiliated with a securities affiliate for more than 1 year may underwrite or deal in commercial paper. A national bank that has been affiliated with a securities affiliate for more than 1 year may not underwrite or deal in municipal securities or commercial paper. This 1-year period is provided solely to afford banks sufficient time to transfer the specified activities from the bank to the securities firm. Title VII also allows a national bank to distribute information regarding securities transactions or quotations and to perform clearing functions.

10. Diversified Financial Holding Companies

If a bank holding company qualifies as a diversified financial holding company, the bill authorizes the Federal Reserve Board to permit that company to continue to engage (up to 20 percent of its consolidated assets) in financial activities in which it engaged as of July 1, 1991 even if those activities are impermissible for bank holding companies.

To qualify as a diversified financial holding company, a company must (1) engage only in financial activities; (2) devote 80 percent of its consolidated assets to activities permissible for bank holding companies under certain provisions of the Bank Holding Company Act; (3) have no more than 20 percent of its consolidated assets in federally-insured depository institutions; and (4) have no more than 40 percent of its consolidated assets in depository institutions of any kind (including foreign depository institutions).

11. Summary

The Glass-Steagall separation between commercial and investment banks has been eroded by the regulatory and judicial interpretation, allowing banks increasing scope to conduct securities activities. Technological and market innovations have effectively broken down many of the distinctions separating commercial and investment banking.

All of the regulatory agencies responsible for ensuring the safety and soundness of our financial system—the Federal Reserve Board, the Securities and Exchange Commission, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, and the Department of the Treasury—supported the 1988 Proxmire Financial Modernization Act on which this legislation is based. They agree that the bill will allow the U.S. economy to enjoy the benefits of competition in financial services without compromising safety and soundness.

Testifying on February 26, 1991 on the Administration's banking proposal, which included repeal of Glass-Steagall, Secretary of the Treasury Nicholas Brady said, "Well capitalized banking organizations must * * * be allowed to use their franchise to participate in the full range of financial services in their natural markets."

Appearing before the Banking Committee on May 7, 1991, SEC Chairman Richard Breeden strongly endorsed Glass-Steagall repeal, noting the benefits expected to flow from such an action.

> The Glass-Steagall Act is an example of legislation for which reform is long overdue. Indeed, the erosion of Glass-Steagall in recent years shows the benefits that can flow from the elimination of unnecessary competitive barriers.
> * * *
>
> Legislation could and should be enacted to expand the benefits of competition to both banking organizations and to the users of the securities markets by removing unnecessary limitations on the size and activities of bank securities affiliates, while ensuring that the principles of functional regulation and appropriate firewalls to protect the banking system and to limit expansion of the use of federally insured funds are maintained.

Chairman Greenspan of the Federal Reserve stated in 1988 that the Proxmire Financial Modernization Act of 1988 was

> fully adequate to protect insured banks from any of the perceived risks involved in securities activities, including the underwriting of corporate debt and equity. We also are confident that we have the necessary resources to assure that banking organizations engaging in securities activities will be vigorously and effectively supervised.

SUBTITLE B—BROKERS AND DEALERS

Under subtitle A of title VII, a bank holding company's securities affiliate is subject to regulation by the Securities and Exchange Commission ("SEC") as a registered broker-dealer under the Securities Exchange Act of 1934 (the "Exchange Act"). Subtitle B applies this sort of functional regulation to certain securities activities engaged in by banks. Specifically, subtitle B subjects bank broker-dealer activities to the same type of SEC regulation as non-bank broker-dealer activities if the bank publicly solicits brokerage business or receives incentive compensation based on effecting securities transactions. However, the bank regulators, rather than the SEC, will continue to regulate certain securities activities that are closely connected to traditional banking activities such as transactions effected in the course of trust activities.

Where SEC regulation applies, a bank, or a separate entity into which the activities are conducted would be required to register as a broker dealer with the SEC.

Background

The Exchange Act currently excludes banks from its definitions of "broker" and "dealer". As a result, a bank may engage directly in permissible securities activities subject to regulation by the appropriate bank regulator, but is not subject to SEC registration, reporting, and other requirements applicable to other brokers and dealers. This general exclusion reflects the fact that bank brokerage and dealer activities traditionally are conducted in conjunction with bank accommodation functions in the context of trust and fiduciary activities.

As noted above, in the 1980's Federal banking regulators determined that additional securities activities, including publicly solicited brokerage activities, could be performed within a bank under current law. In 1985 the SEC adopted its Rule 3b–9, which would have subjected such bank securities activities to Exchange Act regulation. However, a U.S. court of appeals held that the rule was beyond the SEC's statutory authority. *American Bankers Association* v. *Securities and Exchange Commission*, 804 F.2d 739 (D.C. Cir. 1986).

As banking organizations expand the scope of their broker-dealer activities, it is appropriate that SEC regulation apply as a general matter to bank securities activities. A bank engaging in securities activities publicly or for profit and other than traditional banking-related securities activities will be subject to SEC regulation. A bank may continue to engage in certain enumerated securities activities, connected to certain traditional banking activities, subject to primary supervision by its appropriate bank regulator.

The SEC, the Federal Reserve Board, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation all endorsed the predecessor legislation of subtitle B, title III of the 1988 Proxmire Financial Modernization Act.

Brokerage Activities

Subtitle B amends the definition of "broker" in the Exchange Act to include any bank that publicly solicits securities brokerage business or that receives commissions or similar remuneration based on executing securities transactions in excess of its incremental costs directly attributable to executing such transactions ("incentive compensation"). A bank that falls within the definition of "broker" would have to conduct its brokerage activities subject to SEC regulation.

As mentioned above, there are important exemptions to this general requirement of SEC regulation that apply to certain bank securities activities conducted in connection with traditional banking activities. Activities falling within the exemptions could continue in the bank subject to regulation by the appropriate banking regulator. These exemptions include, among others:

- accommodation trust account securities activities, where the bank does not publicly solicit brokerage business or receive incentive compensation;
- "networking arrangements," where a bank contracts with a registered broker-dealer (whether or not affiliated with the bank)

to provide brokerage services on bank premises on a fully disclosed basis;

- transactions in U.S. Government securities, commercial paper, bankers acceptances, and (if the bank does not have a new securities affiliate) municipal securities;
- primary offerings of private placements for certain institutional investors and wealthy individuals, if the bank does not have a new securities affiliate; and
- up to 1,000 securities transactions that are not otherwise exempt if the bank does not have a registered broker dealer subsidiary or affiliate.

Dealing Activities

Subtitle B amends the definition of "dealer" in a manner similar to the "broker" definition. A bank's dealing activities will not be regulated by the SEC to the extent that the bank engages in (1) dealing activities in connection with trust or fiduciary activities; (2) dealing in U.S. Government securities, commercial paper, bankers acceptances, and commercial bills; (3) dealing in municipal securities if the bank does not have a securities affiliate under section 10 of the Bank Holding Company Act; and (4) dealing in certain securities secured by obligations originated or purchased by the bank, its affiliates, or its subsidiaries.

The provisions of this title are not intended to subject the broker-dealer activities of a bank to significant overlapping regulation by the SEC and the Federal banking regulators. The SEC will regulate only the activities of the registered broker-dealer, not the activities of the bank.

SUBTITLE C—BANK INVESTMENT COMPANY ACTIVITIES

Subtitle C treats regulation of bank investment company activities in much the same way that subtitle B treats regulation of bank broker-dealer activities. ("Investment companies" include mutual funds, closed-end investment companies and unit investment trusts.)

The bill permits bank securities affiliates to distribute the securities of investment companies. As banking organizations exercise this new authority, they are also likely to increase their already substantial investment advisory activities. It is therefore appropriate for the SEC to regulate bank investment company activities in the same way that it regulates similar activities engaged in by nonbanking companies, but with due deference to existing supervision by Federal banking regulators.

Subtitle C accomplishes this result with amendments to both the Investment Company Act of 1940 and the Investment Advisers Act of 1940 ("Advisers Act"). The SEC, the Federal Reserve Board, the Comptroller of the Currency, and the FDIC all endorsed title IV of the Proxmire Financial Modernization Act of 1988, on which this legislation is based, and support this bill as well.

Investment Company Amendments

The Investment Company Act governs, among other things, transactions and relationships between registered investment companies and their affiliates. Subtitle C's amendments to the Act are intended to address the issues that arise where investment companies affiliate with banking organizations. The amendments would, among other things:

- prohibit an investment company from borrowing from an affiliated bank, except in accordance with SEC rules;
- limit the extent to which bank or holding company officials could serve as directors of an affiliated investment company;
- prohibit an investment company from having the same or similar name, title or logo as an affiliated insured depository institution;
- prohibit investment companies affiliated with banks from suggesting that their securities are federally insured;
- prohibit an investment company from knowingly purchasing securities being underwritten to repay a loan from an affiliated bank, and
- provide the SEC with authority to establish rules for the custody of an investment company's assets by a bank that is affiliated with the investment company's sponsor.

Investment Adviser Amendments

The Advisers Act currently excludes banks and bank holding companies that act as investment advisers from the registration and other requirements of that Act. Under subtitle C the exclusion is repealed, but a bank would not have to form a separate company to register as an investment adviser. Neither would it be subject to dual regulation by the SEC and the appropriate Federal banking agency. Instead, the bank would have the option of conducting its advisory activities through a separate department or division that would itself register as an investment adviser. Only this separate department of division would be subject to SEC regulation and supervision.

Moreover, the amendments to the Advisers Act minimize duplicative and overlapping regulation. The SEC must notify the appropriate Federal banking agency before initiating any examination of, or enforcement proceeding against, a bank or bank department that is a registered investment adviser. The SEC and the Federal banking agencies must share examination reports of bank investment advisory activities and coordinate enforcement of the regulations governing such activities. The notification and sharing requirements are intended to minimize redundant or duplicative regulation. This is necessary in view of the comprehensive examination and supervision authority that the banking agencies have over bank investment advisory activities, and the many State and Federal fiduciary protections currently applicable to bank investment advisory functions. The notification and sharing requirements are not intended to limit the SEC's discretion to conduct examinations or investigations or to institute enforcement actions. These provisions have no effect on bank activities that do not require registration under the Investment Advisers Act.

An amendment to the Investment Company Act addresses a potential conflict of interest on the part of a bank that serves as investment adviser of an investment company. Such a bank has the ability to vote any investment company shares that it controls as a trustee or fiduciary in favor of retaining itself as investment adviser of the investment company. To prevent this potential conflict of interest, S. 543 requires a bank owning a controlling interest in an investment company that it serves as adviser to pass the voting power of the shares it controls through to the beneficial shareholders or vote those shares in the same proportion as shares held by all other shareholders. The bank may also comply with such alternative rules and regulations as the SEC may prescribe for the protection of investors.

Finally, nothing in this title or any other provision of the bill is intended to prevent a registered broker dealer subsidiary or affiliate of a bank, or a bank engaged in a "networking" arrangement, from executing customer orders for shares of a mutual fund for which the bank's section 10 securities affiliate serves as principal underwriter or investment adviser.

SUBTITLE D—DEPOSITOR PROTECTION AND ANTI-FRAUD

One of the most troubling aspects of the failure of Lincoln Savings and Loan Association concerns the sale of bonds issued by Lincoln's parent, American Continental Corporation. Indictments brought by the California Attorney General allege that Lincoln depositors, many of them elderly retirees, purchased the American Continental bonds under the mistaken impression that they were purchasing federally insured certificates of deposit offered by Lincoln, a federally insured savings association. The indictments allege that Lincoln personnel employed misleading and predatory sales practices. In addition, the confusion experienced by the Lincoln depositors was exacerbated by the fact that the American Continental bonds were sold from sales offices located within Lincoln's branches. As the bonds may now be worthless following American Continental's bankruptcy, the investors may lose their entire investment, which in some cases constituted their life savings.

Federal deposit insurance must not be used to mislead investors. Federally insured depository institutions must not be allowed to use the "FDIC" symbol prominently displayed on the doors of their branches to lull depositors into a mistaken belief that their investments in the institution's securities are protected by deposit insurance. To avoid such abuses, subtitle D of title VII incorporates slightly revised provisions of the Depositor Protection and Anti-Fraud Act originally introduced by Senator Bryan.

This subtitle generally prohibits any equity in or debt of an insured depository institution or its affiliates from being sold or offered for sale in any of the institution's branches that accept insured deposits. Bank branches typically engage in only one function, namely retail banking services. This subtitle generally prohibits the sale of securities of the institution and its affiliates on the institution's retail banking premises.

Many insured institutions maintain large head office buildings housing their executive offices, date processing operations, and other administrative activities not directly related to providing retail banking services. Such buildings typically include a retail banking branch, or office if not set up as a separate branch, that takes insured deposits. This subtitle prohibits such a retail banking operation, whether or not organized as a branch, from selling evidences of indebtedness of ownership in the institution or any of its affiliates. This prohibition applies only to those areas of such a head office building that are clearly accessible to the public and are devoted to retail banking operations. It does not apply to the remainder of the building that is not publicly accessible and not devoted to accepting insured deposits.

In order not to interfere with the institution's ordinary business, the legislation specifies that the prohibition does not apply to, among other things, a deposit, a negotiable instrument sold in the course of business such as a cashier's check or traveler's check, or an interest in a registered investment company. The SEC is given authority to grant exemptions from the prohibition if the exemption is in the public interest and the purchasers would not be likely to confuse the security with an insured deposit. A comparable provision is included for credit unions.

SUBTITLE E—INSURANCE ACTIVITIES

Subtitle E would make several amendments to provisions of current law governing the insurance activities of insured depository institutions.

Agency Powers of National Banks

Current law sharply limits the insurance powers of national banks. The incidental powers clause of the National Bank Act, 12 U.S.C. § 24(7), permits banks to exercise "all such incidental powers as shall be necessary to carry on the business of banking." At least one Court has held that this language does not authorize national banks to engage in general insurance agency activities, see, e.g., *Saxon v. Georgia Association of Independent Insurance Agents*, 399 F.2d 1010 (5th Cir. 1968). The OCC and the courts have, however, construed the incidental powers clause to permit banks to conduct limited insurance agency activities, including the sale of credit-related life, health, and accident insurance, *Independent Bankers Association v. Heimann*, 613 F.2d 1164 (D.C. Cir. 1979), *cert. denied*, 449 U.S. 823 (1980), title insurance, and municipal bond insurance. In addition, the OCC has held since 1963 that section 92 of the National Bank Act authorizes national banks to exercise general insurance agency powers in places of less than 5,000 inhabitants.

Subtitle E would change the agency powers of national banks in two important respects. First, where a State allows State-chartered banks to sell insurance to residents of the State and individuals employed in the State, the subtitle would provide that national banks doing business in the State have the same powers, to the same extent. The parenthetical language indicating that national banks will have such powers "only to the extent" reflects the Committee's intent that, except as expressly authorized for places of less than 5,000 (see below), national banks should not engage in insurance agency activities impermissible for State banks. The Committee believes this provision will promote equitable competition between State and national banks. Because a significant number of States give the banks they charter extensive insurance agency powers, this provision significantly extends the insurance agency powers of national banks.[2]

The second provision affecting insurance agency powers of national banks would limit the effect of recent administrative and judicial interpretations of the "small town" authority of national banks. In 1986, the OCC ruled that section 92 of the National Bank Act permits a national bank with a branch in a place of less than 5,000 inhabitants to sell insurance nationwide through that branch. OCC Staff Interpretive Letter No. 366 (August 18, 1986). This interpretation has been upheld by the courts. *National Association of Life Underwriters v. Clarke,* 736 F. Supp. 1162 (D.C.D.C. 1990).

The Committee believes this interpretation of section 92 is too permissive. Subtitle E would recodify and amend the grant of authority in section 92 to restrict national bank branches in rural areas to soliciting and selling insurance to residents of such areas, and individuals employed in such areas, throughout the State in which the branch is located. This grant of authority is, in effect, an exception to the general rule limiting national banks to insurance agency activities permissible for State banks. The term "companies," as used in this subtitle, includes corporations, partnerships, and other business organizations.

The Committee is aware of pending litigation in which national banks assert the inability of certain States under current Federal law to enforce against them provisions of State law restricting the sale of insurance by banks. The Committee does not intend this recodification of section 92 to indicate any view whatever on the merits of such litigation.

Underwriting Powers of State Banks

The Committee has been concerned for some time by the risk to the deposit insurance funds that results when States authorize depository institutions that are State-chartered, but federally-insured, to engage in high-risk activities.

Insurance underwriting is an activity of particular concern to the Committee. By its nature, it is an activity involving the assumption of risk in exchange for payment. The recent failures of several large insurers, and widely-reported distress of several more, clearly show the substantial risks inherent in the business of insurance underwriting. Moreover, it does not appear that allowing banks to underwrite insurance would significantly increase competition or lower prices. The insurance industry is already highly competitive, including some 2,350 individual life insurers and 3,900 property/casualty insurers, according to industry sources.[3] The entry of banks into such a competitive market is unlikely to produce significant benefits for either banks or consumers.

Although few States authorize banks they charter to underwrite insurance and, consequently, few State banks engage in such activity, the Committee is concerned by the State of Delaware's recent enactment of legislation demonstrating the ability of States to put the deposit insurance funds at risk by authorizing insurance underwriting for State banks.

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[2] According to information supplied to the Committee by the Council of State Bank Supervisors, 28 States and the District of Columbia permit banks they charter to engage in general insurance agency, either directly or through a subsidiary. Eleven of these States, however, restrict such activities to towns of limited size.

[3] American Council of Life Insurance, 1990 Life Insurance Fact Book, 3; Insurance Information Institute, 1991 Property/Casualty Insurance Facts, 12. Life insurance figure is a preliminary estimate for 1989. Property/casualty figure reported as of mid-year, 1990.

On May 30, 1990, the Governor of Delaware signed into law a new insurance statute giving Delaware banks broad insurance powers. The law has two important features. First, it permits a Delaware-chartered bank both to underwrite and to sell all types of insurance (except title insurance) on a nationwide basis "through a subsidiary [or] through a department or division" of the bank. Second, it permits out-of-State bank holding companies to own Delaware banks engaged in such activities, provided they are "operated in a manner and at a location that is not likely to attract customers from the general public in [Delaware] to the substantial detriment existing banking institutions located in this State." Thus, the statute permits out-of-State bank holding companies to use Delaware as a base of operations for insurance underwriting and sales activities elsewhere in the United States, so long as they do not inflict competitive harm on existing Delaware banks.

Following enactment of the Delaware law, Citicorp's Delaware bank subsidiary acquired a controlling interest in Family Guardian Life Insurance Company. A coalition of insurance agent trade associations then petitioned the Federal Reserve Board for a ruling that Citicorp's efforts to sell insurance through a subsidiary of its Delaware bank violated section 4(c)(8) of the Bank Holding Company Act. The Board granted the petition on September 5, 1991, and ordered Citicorp to cease its insurance activities under the Delaware law. Citicorp then challenged the Board's ruling in the United States Court of Appeals and, on June 10, 1991, obtained a decision overturning the Board's order. *Citicorp v. Board of Governors of the Federal Reserve System*, No. 90-4124, slip op. (2d Cir. June 10, 1991).

Subtitle E would amend the Federal Deposit Insurance Act to establish a general rule restricting State banks to insurance underwriting activities permissible for national banks. The Committee believes this general rule will protect the deposit insurance funds and the taxpayers and help to ensure fair competition between national and State banks.

Subtitle E also includes a grandfather clause setting forth a limited exception to the general restriction on the permissible insurance underwriting activities of State banks. Specifically, a State bank, or a subsidiary of such a bank, that was lawfully providing insurance as principal in that State on July 15, 1991, may continue to provide insurance of the same type to residents of that State, individuals employed in the State, and any other person to whom the bank or subsidiary has provided insurance as principal, without interruption, since such person resided in or was employed in such State. In this context, the Committee understands the phrase "lawfully providing insurance as principal" to require that the State bank have been actively engaged in the business of underwriting new insurance coverage on the grandfather date. The mere fact that, on the grandfather date, insurance previously underwritten by the State bank remained in force would not be sufficient to bring a State bank within the scope of the exception to the general rule. The Committee understands that, although the decision of the Second Circuit Court of Appeals issued on June 10, the court had not yet issued its mandate pursuant to that decision as of the grandfather date. The Committee therefore believes that insurance activities pursuant to the Delaware law lie outside the scope of the grandfather provision.

The grandfather clause's limitation to insurance "of the same type" as that being provided on the grandfather date should be construed narrowly. For example, this provision should not be construed to permit the provision of ordinary life insurance by an institution that, on the grandfather date, was providing only credit-related life insurance.

Interstate Insurance Agency Activities

During the Committee's markup of S. 543, Senator Dodd offered and the Committee adopted by a vote of 18-3, an amendment to S. 543 restricting interstate insurance activities of bank holding companies. This amendment has been incorporated into Subtitle E as section 774 of the bill.

The Dodd amendment prohibits any bank holding company from allowing a subsidiary bank, or a subsidiary of such a bank, to sell insurance beyond the borders of the State in which the subsidiary bank is chartered unless the statute laws of the State in which the insurance is sold expressly authorize such out-of-State sales, by language to that effect and not merely by implication. The Committee intends the requirement that the host State authorize such sales by express statutory language to preclude insurance sales by out-of-State bank subsidiaries of bank holding companies or subsidiaries of such banks in States where insurance agency activities are held permissible by agency or judicial interpretation in the absence of express statutory language.

The Dodd amendment also includes a grandfather provision for bank holding companies whose subsidiary banks, or subsidiaries of subsidiary banks, were selling insurance beyond the borders of the chartering State on June 1, 1991. The grandfather extends only to the continuing sale of insurance functionally equivalent to the type of insurance the bank, or subsidiary of a bank, was selling on the grandfather date. Thus, for example, a bank whose out-of-State insurance agency activities on the grandfather date extended only to ordinary life insurance would not be within the scope of the grandfather if it later wished to sell property/casualty insurance.

Customer Protection

The Committee is concerned that—in the absence of statutory safeguards—a potential for practices abusive to bank customers may arise when banks also act as insurance agents. Accordingly, Subtitle E includes three important safeguards against such abuses.

First, Subtitle E forbids banks holding companies and subsidiaries of bank holding companies from using confidential customer information that is proprietary to a bank for the purpose of engaging in any insurance activity. "Confidential customer information" does not include names and addresses of bank customers, but would include, for example, information concerning a bank customer's assets or financial condition.

Second, Subtitle E prohibits bank holding companies and subsidiaries of bank holding companies from requiring customers to purchase an insurance policy or contract from any particular insurer as a condition of providing any product or service. The Committee is specifically concerned that some banks might otherwise attempt to force some customers to purchase insurance from the bank, or from an affiliate of the bank, as a condition of receiving credit. The Committee intends this provision to preclude such unfair tying practices.

Finally, Subtitle E prohibits bank holding companies and their subsidiaries from soliciting the sale of insurance required under the terms of a proposed loan or extension of credit before the loan customer has received a written commitment with respect to the loan or extension of credit. This provision applies to renewals of loans and extensions of credit as well as originations.

TITLE VIII—THRIFT-TO-BANK CONVERSIONS

There is a current perception that a thrift franchise entails "negative value"—that it is harder for a thrift to attract depositors simply because it is a thrift. Some thrifts would therefore like to change their charters and become commercial banks. Title VIII facilitates conversions by savings associations into commercial banks by streamlining the process of converting from a thrift charter to a bank charter.

Section 206 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") permitted savings associations to convert to bank charters so long as the resulting banks remained insured by the Savings Association Insurance Fund. Notwithstanding this clear expression of Congressional intent, the FDIC and the Office of Thrift Supervision ("OTS") expressed the view that a separate source of authority was required for a savings association to convert to a commercial bank. The OTS initially took the position that a federally-chartered thrift could not convert directly into a commercial bank but instead had to convert first into a state-chartered savings association and then convert to a commercial bank under applicable Federal or state law. The OTS, following the practice of the Federal Home Loan Bank Board, also required any savings association seeking to convert to a commercial bank to obtain prior regulatory approval.

In November 1990 the OTS reversed its position and held that a Federal savings association could convert directly to a national bank. The OTS continues, however, to require thrift institutions seeking to convert to banks to obtain its prior approval. The OTS's approval requirement has made the conversion process more expensive, time consuming and uncertain. Savings associations seeking to convert to bank charters currently cannot predict how long it might take to secure OTS approval for a conversion or the conditions that the agency may elect to impose on its approval.

Another impediment to thrift-to-bank conversions arises in the area of branching. In approximately 11 states, savings associations have more extensive branching rights than do state-chartered commercial banks and national banks. Thrift institutions in those states that convert to commercial bank charters are currently required to divest themselves of branches they are not permitted to operate as banks.

An additional factor frequently cited for the relatively small number of thrift-to-bank conversions that have taken place since the enactment of FIRREA is the adverse tax consequences of such conversions. Under current tax law, savings associations that qualify as "domestic building and loan associations" receive more favorable tax treatment in computing their bad debt deductions than is available to commercial banks. In revenue rulings issued in 1985 and 1990, the Internal Revenue Service held that thrifts converting to commercial banks may not be treated as domestic building and loan associations, even if they continue to keep the required portion of their assets in home mortgage loans and housing-related investments. The IRS requires converting institutions to change their method of accounting in calculating their bad debt deductions, leading to a recapture into income of the balance of the institution's bad debt reserve remaining at conversion. This recapture can result in a significant additional tax liability for a converting thrift that has a large bad debt reserve at the time of conversion.

Title VIII facilitates thrift-to-bank conversions by providing explicit statutory authorization for Federal and state savings associations to convert directly to national banks. This legislation clarifies current law permitting such conversions. The procedures currently applicable to conversion by state banks to national banks would be applicable to Federal and state savings associations. The legislation eliminates the need for most savings associations to obtain prior OTS approval before converting to national bank charters. A mutual savings association converting to a national bank with a stock form of ownership must secure the approval of the OTS only for the mutual to stock conversion. Converting thrifts must have capital sufficient for a national bank. An institution's conversion would not affect its membership in either the Savings Association Insurance Fund or the Bank Insurance Fund. Federal and state savings associations may also convert to state banks chartered by their home states if applicable state law permits.

The legislation further allows thrifts that become national banks to retain and operate any branch located in its home state that it had been lawfully and continuously operating for at least two years. Any further branching by such institutions must comply with branching restrictions applicable to national banks.

S.543 further expresses the sense of Congress that the Internal Revenue Code should be amended so that a thrift converting to a national bank would not incur a tax penalty so long as it continues to meet the tax rule requiring it to have 60 percent of its assets in housing-related investments.

TITLE IX-FINANCIAL INSTITUTIONS ENFORCEMENT IMPROVEMENT ACT

Introduction

Title IX contains needed improvements to the enforcement of Federal laws prohibiting money laundering. The legislation authorizes Federal depository institutions regulatory agencies to revoke charters, terminate deposit insurance and remove or suspend officers and directors of depository institutions involved in money laundering or monetary transaction reporting offenses; requires the Secretary of the Treasury to issue regulations providing that depository institutions identify their nonbank financial institution customers subject to the Bank Secrecy Act; prohibits illegal money transmitting businesses; and provides for enhanced reporting and recordkeeping regarding financial transactions.

Purpose of the legislation

The money laundering provisions contained in Title IX address gaps in money laundering deterrence and enforcement schemes. The legislation authorizes new penalties for convicted institutions and bank personnel to enhance deterrence and enforcement; improves cooperation between Federal and state authorities; improves oversight and enforcement of money laundering compliance programs of nonbank financial institutions; and addresses wire and other funds transfer transactions that currently are not monitored for detection of money laundering. By making it easier for law enforcement officials to detect movements of illegal funds through the American financial system, the Committee intends to help put drug dealers out of business. The President will be required to report annually to Congress on efforts to ensure that other countries adopt comprehensive measures against money laundering.

SUBTITLE A—TERMINATION OF CHARTERS, INSURANCE AND OFFICES

History of the legislation

Subtitle A of Title IX incorporates the provisions of S. 2327, the "Depository Institution Money Laundering Amendments of 1990", introduced by Senators Kerry, Riegle, Metzenbaum, Garn, Bond, Bryan and Hatch on March 22, 1990. S. 2327 would have authorized Federal depository institution regulatory agencies to revoke charters, terminate deposit insurance, and remove or suspend officers and directors of depository institutions involved in money laundering or monetary transaction reporting offenses.

On May 18, 1990, two panels of witnesses testified before the Committee on S. 2327. The first panel included Peter K. Nunez, Assistant Secretary for Enforcement testifying on behalf of the Department of the Treasury; Arthur L. Beamon, the Assistant General Counsel for Compliance and Enforcement testifying on behalf of the Federal Deposit Insurance Corporation; and Clyde H. Farnsworth, Jr., the Director of the Federal Reserve Bank Operations testifying on behalf of the Federal Reserve System. Witnesses on the second panel were Boris F. Melnikoff, Senior Vice President of First Wachovia Corporation in Atlanta, Georgia, and Vice Chairman of the American Bankers Association Money Laundering Task Force; Susan W. Sweeney, Senior Vice President and General Counsel of Deak International, Ltd.; and Stephen Wolf, Treasurer of Pay-O-Matic Corporation of Syosset, New York, and Treasurer of the Executive Committee of the National Association of Check Cashers.

Provisions of S. 2327 incorporated in Title IX reflect many of the technical and procedural changes suggested by the witnesses.

Discussion

Subtitle A increases the penalties for money laundering offenses by depository institutions. Former Assistant Treasury Secretary Martoche testified on November 1, 1989, that estimated annual worldwide drug revenues are $300 billion, of which approximately $110 billion is generated in the United States. The bulk of the money is in small bills which can be difficult to utilize; therefore the money must be "laundered" through banks. The initial placement of this bulk cash is the most vulnerable stage for interception and depository institutions therefore play a key role in catching drug traffickers.

Although most depository institutions have instituted deterrence and compliance programs and actively enforce those programs, problems still exist. Congress became acutely aware of the shortcomings of existing penalties as a result of the money laundering case against Bank of Commerce and Credit International ("BCCI"). United States v. Bank of Credit and Commerce International, S.A., M.D. Fla., No. 88-330-CR-T-13(B) (filed January 16, 1990). Top level management of BCCI allegedly knowingly and intentionally encouraged or permitted the bank to receive and launder large sums of illicit profits. BCCI pled guilty and paid a forfeiture of more than $14 million, potentially a mere fraction of its profits from laundering drug and other illicit profits, including profits of General Manuel Antonio Noriega, and possibly money derived from the Government itself in the course of a "sting" operation. On September 5, 1991, the United States Attorney for the Middle District of Florida unsealed a new indictment of six BCCI officials on charges of using the institution to launder millions of dollars of cocaine profits over six years for the Medellin drug cartel.

Committee and other members of Congress became concerned that plea agreements such as the 1990 BCCI plea send a message that the U.S. Government is not serious about prosecuting and stopping money laundering. This legislation addresses a perceived lack of authority to close institutions involved in extensive money laundering activities and specifically permits Federal regulatory agencies to close federally-chartered and federally-insured state chartered institutions convicted of money laundering crimes. The Committee, recognizing the growing problem of criminal use of the nation's financial system to disguise and launder the proceeds from illegal activity, adopted this legislation to enhance existing regulatory powers and to focus regulatory efforts in this area of national concern. A depository institution engaging in a criminal activity should be particularly aware that its charter and its Federal deposit insurance come as a matter of privilege, not right, and may be terminated when appropriate by the Federal regulators.

At least one witness raised the concern that the addition of money laundering as a specific ground for revoking charters, terminating insurance, and removing institution affiliated parties could be interpreted to limit somehow the existing general authority of the Federal regulators to take those actions for offenses not specifically addressed by statute. That is not the intention of this legislation. This legislation adds to the Federal banking agencies' enforcement powers in order to address a specific area of national concern.

By providing specific language allowing the Federal banking agencies to revoke charters and terminate insurance for money laundering and monetary transaction reporting offenses, the Committee does not in any way intend to limit the Federal banking agencies' ability to take action for violations, offenses, acts or omissions not specifically enumerated. The legislation is not intended to limit in any way the wide latitude and discretion Federal banking regulators now have to determine what constitutes unsafe or unsound banking practices.

Current law clearly authorizes fines and imprisonment for violations of the money laundering and transaction reporting statutes. Nevertheless, some questions were raised about the ability of the Federal government to close an institution with a policy of soliciting illicit money and in which senior management officials knew of the money laundering. Current law also permits Federal regulators to close an institution found to be in an unsafe and unsound condition but this may not always be readily demonstrated in cases of money laundering. Additionally, under current law Federal insurance fund regulators may terminate the deposit insurance of a Federal or state chartered institution that has violated any law or regulation but must grant the institution a 30-day period to correct the violation. The Committee, however, determined that the correction period is not applicable or appropriate with respect to money laundering violations.

The legislation provides that, when a Federal bank, savings and loan or credit union is convicted of a money laundering or reporting violation, the Attorney General must provide a written notice to the appropriate Federal regulatory agency. Federal bank regulatory agencies were concerned that otherwise they would not be aware that the institution had been found guilty of a criminal offense and so would not trigger the hearing notices required by this legislation.

When the regulatory agency receives notice from the Attorney General that an institution has been convicted of a money laundering crime, i.e., criminal violations of sections 1956 or 1957 of Title 18, U.S.C., the regulatory agency must hold a hearing to consider revocation of the institution's charter. The Committee does not intend for the section to be triggered by the imposition of a civil penalty under section 1956(b). If the institution is convicted of a transaction reporting offense, the regulatory agency may, but is not required to, hold a revocation hearing. Similar provisions apply with respect to hearings by the Federal insurer to consider termination of insurance of a convicted State chartered depository institution. The agency must consider and weigh certain factors before a charter is revoked or insurance is terminated.

The Committee intends that all proceedings taking place under this section, as well as all proceedings required by this legislation, be conducted with appropriate procedural guarantees and be subject to judicial review. For this reason, the Committee specifically provides that existing procedures, except for the period for correcting a violation, apply to the hearings conducted under this section.

The successor liability provision provides other important protections. That provision provides protection to successors to the interests of, or acquirers of, depository institutions that acquire the institution in good faith and not for the purpose of evading the provisions of the legislation. On August 7, 1989, the Fifth Circuit ruled in *Alamo Bank* v. *United States*, 880 F. 2d 828, that Alamo was liable for the failure to file certain currency transaction reports of a bank that it acquired almost three years after the alleged criminal conduct. The Supreme Court decided not to review the case. Since a charter revocation results in the termination of a depository institution, this decision may have a chilling effect on mergers of depository institutions. Therefore, the Bill provides protection for good faith acquisition of depository institutions.

Finally, the Committee is aware that an institution's conviction and a regulatory agency's determination could have potentially grave consequences for the community it serves. Because of the Committee's concern that the hearing notices not provoke undue concern in the community before any decision has been taken, only final notice of the order to terminate an institution's charter or insurance need be made public. In light of the state banking supervisor's interest in the safety and soundness of the banking system and the needs of the local community, however, the Bill allows the state supervisor to receive the initial hearing notice sent to the state depository institution. In addition, the Bill incorporates current law which provides that when insurance is terminated, the institution's existing insured deposits will remain insured for six months to two years. The Committee understands that if an institution loses its charter it will be treated the same as any other institution that fails and that the termination provisions of current law apply to insure temporarily the institution's deposits. The Committee, therefore, concluded that no specific provision was necessary to accomplish this result.

Removal of parties

Former Assistant Secretary Salvatore Martoche testified on November 1, 1989: "we have discovered that money launderers have learned that they do not have to buy a bank. All they have to do is buy a banker." The Committee intends that an institution affiliated party engaged in money laundering or violations of currency reporting requirements, or an officer or director who knows of such activities or violations, be aware that, in addition to any other penalty, they may also be suspended or removed from participating in the affairs of the institution or the industry.

In comments prepared for the Committee's May 18, 1990 hearing, Robert B. Serino, Deputy Chief Counsel for Policy, writing on behalf of the Office of the Comptroller of the Currency ("OCC") stated:

> The primary responsibility for compliance with the law appropriately rests with each financial institution since it is the first and most important line of defense against money laundering. At the same time, the OCC has continuing responsibility to monitor the national banking system and to ensure that national banks use safe and sound banking practices and comply with the law. Accordingly, in our supervisory efforts, we focus on both management's and the board of director's ability and commitment

> to ensure behavior that is both prudent and in compliance with the law. It has been our experience that no amount of examination or supervision works as well as a bank's own system of internal controls.

In order to encourage management's active involvement in money laundering deterrence efforts, the Committee specifically provides penalties for violators. Officers and directors should be responsible for creating, implementing and monitoring an effective program of money laundering deterrence within depository institutions and for taking steps to ensure their employees comply with the program.

Current law provides for the removal of "institution affiliated parties" including, bank employees, consultants, joint venture partners, and independent contractors, such as attorneys, accountants, appraisers, and others. However, current law requires the agency to establish a number of elements. In order to remove a party, the agency must determine that: (1) the party violated a law or regulation, engaged in an unsafe or unsound practice or committed an act or omission which constitutes a breach of the party's fiduciary duty; (2) such violation, practice or breach caused the depository institution to suffer financial loss, the interests of depositors were prejudiced or the party received financial gain; and (3) such violation, practice or breach involves personal dishonesty or demonstrates willful or continuing disregard for the safety or soundness of the institution. The Committee believes that these findings are not appropriate for money laundering violations because they may prevent agencies from rapidly removing parties who have engaged in money laundering. Moreover, current law specifically provides for removal for violations of the Depository Institution Management Interlocks Act without establishing the elements listed in the general removal provision. This latter approach is more appropriate for certain money laundering crimes; therefore, the legislation amends the current provision to include specific references to money laundering violations.

The Committee does not intend to limit current Federal regulatory authority. The Committee recognizes that Federal regulators already have authority to remove institution affiliated parties and does not intend in any way to limit the authority of the Federal regulators to take action for violations, offenses, acts or omissions not specifically enumerated. The legislation is not intended to limit in any way the wide latitude and discretion Federal banking regulators now have to determine what constitutes unsafe or unsound banking practices.

The legislation provides for removal when the agency determines that an institution affiliated party violated the transaction reporting requirements of the Bank Secrecy Act, unless such violation was inadvertent or unintentional. The agency also may remove an officer or director of an insured depository institution if the agency determines that such party knew that an institution affiliated party of the institution violated the money laundering or reporting requirements statutes. In determining whether an officer or director of an insured depository institution or credit union "had knowledge" that an institution affiliated party violated subchapter II of chapter 53 of title 31, U.S.C. or section 1956 or 1957 of title 18, U.S.C., the Committee intends that the appropriate Federal regulatory agency determine whether there was actual knowledge or a "conscious purpose to avoid learning the truth." The "knowledge" standard, therefore, covers actual knowledge of a violation and actions by officers and directors that evidence a conscious disregard or deliberate ignorance of known circumstances that should reasonably alert such officers or directors to the high probability of such violations. The agency must consider whether the officer or director took appropriate action to stop, or to prevent the recurrence of, a violation by the institution affiliated party. A supervisor who monitors employees and takes appropriate action should not be removed.

The suspension, hearing and judicial review provisions of existing law apply to removal for money laundering and reporting requirement offenses. Therefore, prior to removing the party, the agency must hold a hearing after serving notice upon the party. The party may be suspended pending the hearing procedures if the agency determines that suspension is necessary for the protection of the depository institution or the interests of depositors.

As under current law, the legislation provides separate provisions for institution affiliated parties charged with felonies. Under current law, when a party is charged in an indictment, information or complaint with the commission of or participation in a crime involving dishonesty or breach of trust, the appropriate regulatory agency may suspend that party from the institution if continued service or participation by such party may pose a threat to depositors' interests or impair public confidence in the institution. If the party is convicted or enters into a plea agreement, the agency may also remove the party if continued service or participation by such party may pose a threat to depositors' interests or impair public confidence in the institution.

The legislation permits suspension of a party indicted on money laundering offenses from an institution when the agency determines it appropriate. The agency need not show that continued service or participation by the party may pose a threat to depositors' interest or impair public confidence because the Committee determined that those conditions may not be applicable to money laundering and transaction reporting offenses in all cases. When the party is convicted of money laundering or transaction reporting offenses, the regulatory agency must remove the party from the institution. Since criminal procedures apply to a party's indictment or the conviction, the agency is not required automatically to conduct an administrative hearing under existing law. However, the party suspended or removed may invoke the review procedures of existing law, requesting an agency hearing and judicial review.

In response to an agency's suggestions, a provision amending 12 U.S.C. 1829 was added to prohibit any person who has been or is convicted of money laundering from serving as a director, officer, or employee of an insured bank except with the written consent of the FDIC.

The Committee also amended section 5319 of title 31, U.S.C., to require that the Secretary of the Treasury provide currency transaction reports to state financial institutions supervisory agencies for supervisory use only. Current law provides for the sharing of reports filed pursuant to the Bank Secrecy Act by the Treasury Department with other federal agencies with certain limitations. This provision responded to the November 1, 1989 testimony of the Florida State Comptroller about the importance of currency transaction reports to State supervisory and law enforcement efforts. The Committee intends that State financial institution supervisory agencies and Federal supervisory agencies cooperate to close financial institutions to money laundering activity. Sharing of information with State supervisory agencies also would discourage States from enacting duplicative reporting requirements for financial institutions.

SUBTITLE B—NONBANK FINANCIAL INSTITUTIONS AND GENERAL PROVISIONS

History of the legislation

Subtitle B of Title IX incorporates most of the provisions of S. 2561, the Money Laundering Enforcement Act, introduced by Senator D'Amato on May 17, 1990. S. 2561 contained provisions to regulate nonbank financial institutions and international and other funds transfers, miscellaneous provisions to enhance money laundering enforcement under existing statutes and to amend the Right to Financial Privacy Act.

The issues addressed in S. 2561 were considered at a hearing before the Committee's Subcommittee on Consumer and Regulatory Affairs on November 1, 1989, and at the Subcommittee's field hearing in Fort ~~Lauderdale, Florida~~, on December 4, 1989. Witnesses on November 1 were: Gerald Lewis, Comptroller, State of Florida; Timothy D. Mahoney, Director of Special Investigations Division, New York State Department of Banks; John Lee, Executive Director, New York Clearing House Association; Chuck Morley, Morley Group; Joseph Madison, Joseph Madison Associates, Inc.; L. Don Sargent, President and CEO, American Commerce National Bank, representing the Independent Bankers Association of America; Jerome S. Gagerman, President, National Check Cashers Association; Boris Melnikoff, Senior Vice President, First Atlanta Corporation, representing the American Bankers Association. Witnesses on December 4 were: Charles Saphos, Chief Narcotics and Dangerous Drugs Section, Criminal Division, U.S. Department of Justice; Merlin Heye, District Director, Fort Lauderdale District, Internal Revenue Service; Leon Guinn, Assistant Regional Commissioner, Enforcement, U.S. Customs Service; Larry Fuchs, Deputy Comptroller, Office of the Florida Comptroller; Peter Fowler, Vice President and Department Head, International Private Banking, Barclays Bank in Miami; and Charles Intriago, Floyd, Pearson, Richman, & Greer and Publisher of Money Laundering Alert. The specific provisions of S.2561 were addressed in the Committee's hearing on May 18, 1990.

Discussion

Regulation of money transmitters, check cashers and other nonbank financial institutions

In the past, drug money laundering deterrence legislation has focused on depository institutions. However, as deterrence and compliance programs by depository institutions have improved, money launderers with illicit profits have found new avenues of entry into the financial system. Peter Nunez, the Assistant Secretary of the Treasury for Enforcement, testified before the Committee in May 1990 that "[i]t is undisputed that as Bank Secrecy Act compliance by banks has improved, drug money launderers have and will continue to turn to [nonbank financial institutions] to convert street currency into monetary instruments and even to transmit abroad the proceeds of drug sales." Increasingly, money launderers are using money transmitters, check cashers, money exchanges and other nonbank financial companies for initial placement and the number of such businesses is growing rapidly in some states.

Timothy Mahoney, the Director of Special Investigations for the New York State Banking Department, testified before the Subcommittee on Consumer and Regulatory Affairs in November 1989:

> As banks became more sophisticated in reporting currency transactions, drug dealers became more creative and began to rely increasingly on unlicensed and illegal money transmitters, on check cashers, and on money order vendors, all users and sources of high amounts of cash * * *. It is primarily the unlicensed money transmitter who provides the best means of laundering money and is most often used to structure illegal transactions.

The New York Times reported on September 25, 1989, in an article titled "Unassuming Storefronts Believed to Launder Drug Dealers' Profits," that state banking regulators around the country have found that thousands of small, inner city money transmitting and check cashing businesses are sending billions of dollars to drug dealers in South America and Asia and that the majority of these businesses are illegal, unlicensed and unregulated.

These companies vary in size, in the scope of their services and in the extent to which they are regulated. Money transmitting, check cashing and money exchanging are regulated at the state level. Although most, but not all, states have some form of licensing requirements, in many instances insufficient state resources have been devoted to regulation and supervision of the industries or to the pursuit of criminal cases against illegal operators.

At the Federal level, regulations permit depository institutions unilaterally to exempt transactions by certain categories of businesses, including licensed check cashers, from the currency transaction reporting requirements without prior approval from the Treasury Department. Licensed check cashing and money transmitting businesses are required to file Bank Secrecy Act reports. However, the Treasury Department testified on May 18, 1990, that compliance by these institutions with the Bank Secrecy Act and with other anti-money laundering measures is generally poor. Peter Nunez testified that the IRS has had difficulty monitoring these institutions' compliance because of the vast number of entities and the difficulty of identifying them. He testified that, as a result of these problems, and state jurisdiction over these entities, Federal law enforcement agencies have tended to leave oversight to the states. Since the Federal government has left regulation of these businesses to the states and the states have not devoted sufficient resources to the effort, these industries represent a gaping hole in the money laundering deterrence effort.

The legislation significantly increases the Federal role in working with the states to deter money laundering. The legislation does not preempt state laws. Instead, it provides for an expanded Federal role in a way that enhances and supplements state regulation. The legislation requires the Secretary of the Treasury to issue regulations by January 1, 1992, requiring that depository institutions identify their nonbank financial institution customers—money transmitters, check cashers, foreign exchange dealers, issuers and redeemers of traveller's checks and others. Depository institutions will provide the name and other information about these financial institutions customers to the Secretary as prescribed by the regulations. The Treasury Department will provide the list to state supervisory agencies for supervisory purposes. A new civil penalty of up to $10,000 per day applies to persons including the nonbank financial institutions and their officers, directors and employees who misrepresent the nature of their businesses to depository institutions. The criminal provisions contained in 31 U.S.C. 5322 of the Bank Secrecy Act also apply.

This reporting will assist Federal and state enforcement agencies in identifying the universe of nonbank financial institutions so that the agencies can communicate directly with the institutions on deterrence and compliance procedures. The Committee anticipates that as part of the Treasury Department's regulations, guidelines on identifying these financial institutions will be issued. In this way, if a depository institution follows the Treasury guidelines and reasonably relies on a misrepresentation by its customer, the depository institution will not be liable.

The legislation also creates a Federal crime for knowingly operating a money transmitting business in violation of state law where the state requires a license and makes unlicensed money transmitting punishable as a misdemeanor or felony. This latter provision is modeled on 18 U.S.C. 1955, "Prohibition of illegal gambling business," which makes a Federal crime of operating a gambling business in violation of state law. The Racketeer Influenced and Corrupt Organizations Act is another example of a Federal statute where violations of certain state laws are predicate offenses for Federal penalties. The Committee's legislation provides for money penalties, imprisonment up to five years, and forfeiture of property, including money, used in the violation.

Finally, the wire transfer reporting requirements include money transmitters, check cashers and foreign exchange dealers, not only depository institutions. All of these institutions will be required to keep records on funds transfers and, when requested, provide those records to the Treasury Department.

International wire and other funds transfers

Wire transfers appear to be a weak link in law enforcement efforts against money laundering. Recent investigations of significant money laundering operations, in particular Operations Polar Cap and C-Chase, revealed the use of international wire transfers in money laundering operations. Once money is deposited in a depository institution, it can be transmitted by wire from that institution to an institution outside the country, around the world and back into the country. The Federal Reserve Board estimates that one trillion dollars in international wire transfers occur each day, making it difficult for law enforcement agencies to trail money launderers.

Detecting and tracing laundered money would be facilitated if certain basic information were required to be recorded as part of every transaction. The Treasury Department has authority under existing law to require financial institutions to keep records about wire transfers but has not specified what types of information must be recorded. In October 1989, the Treasury Department issued an Advance Notice of Proposed Rulemaking asking for comments on a number of possible proposals to address regulation of international wire and other funds transfers. The Committee believes that prompt adoption of recordkeeping regulations by the Secretary of the Treasury is desirable. The legislation therefore requires the Treasury Department, after consultation with the Federal Reserve Board and State banking departments, to issue final regulations that require depository institutions, money transmitters, check cashers and money order operations to maintain records of payment orders involving international and other funds transfers and to make those records available to the Secretary upon request. Nonbank financial institutions were included to address the increasing use of the institutions by money launderers to wire funds overseas. Typically, these institutions take a payment order from the customer and forward the order to a depository institution or, less frequently, to another smaller private payment network.

The legislation requires balancing costs and benefits. Specifically, in prescribing the regulations, the Secretary must consider the usefulness in criminal, tax or regulatory investigations or proceedings of any record required to be maintained and the effect the recordkeeping will have on the cost and efficiency of the payment system. The Committee expects that the costs and burdens on financial institutions will be considered as part of the analysis of the impact on the payment system. Nevertheless, the Committee anticipates that the Treasury Department will determine what types of information the wire systems realistically can incorporate in their payment order forms and that the regulations result in the production of information that is useful to law enforcement authorities and not merely a costly and burdensome generation of data.

Other enforcement measures

The legislation expands the regulatory authority of the Secretary of the Treasury to permit the promulgation of "know your customer" rules. Law enforcement authorities have discovered that, while transaction reports are important tools in deterrence and enforcement, reports by depository and financial institutions of suspicious transactions or suspicious activities can greatly enhance enforcement. The first step in making effective reports of suspicious activity and protecting institutions from being used to further money laundering is a program designed to verify the legitimate nature of a customer's business and to ensure that account activity is commensurate with that business. The Secretary is further authorized to require financial institutions to adopt anti-money laundering programs, to include development of internal controls, designation of a compliance officer, ongoing employee training and an independent audit. The Secretary may promulgate minimum standards for such programs. If the Secretary chooses to promulgate such standards, they should be similar to the comparable regulations applicable to depository institutions.

Many depository and financial institutions have "know your customer" programs, but others do not and, among those that do, the quality is variable. Therefore, regulations requiring such programs and setting forth guidelines are needed. Current law authorizes the Secretary to issue regulations to ensure compliance with the Bank Secrecy Act reporting requirements. Therefore, under current law, the Treasury Department's "know your customer" regulations would be based on the Department's authority to ensure compliance with cash transactions reporting under 31 U.S.C. 5313 and compliance with regulations pertaining to transactions with foreign financial agencies under 31 U.S.C. 5314. The legislation clarifies the Treasury Department's authority to promulgate regulations to guard against money laundering generally, whether or not cash or foreign transactions are involved. The Treasury Department indicated that the regulations will be applicable to both depository and other financial institutions.

The legislation also amends a Bank Secrecy Act provision added by the Anti-Drug Abuse Act of 1988. Section 5326 of title 31 grants the Treasury Department authority temporarily to require financial institutions in certain geographic locations to report transactions at a lower dollar threshold in order to detect the practice of "smurfing" (conducting a number of transactions each in amounts less than $10,000). To prevent money launderers from circumventing these orders, this legislation prohibits financial institutions from disclosing the existence or terms of the order to any person, except as prescribed by the Secretary. Currently, orders sent to financial institutions instruct employees to maintain secrecy with respect to the order. By specifically prohibiting disclosure, however, the legislation permits action against employees who make improper disclosures. The Committee anticipates that the orders will continue to include the secrecy notice to employees. The Committee also received comments from the Office of Thrift Supervision questioning whether or not institutions will be permitted to disclose the existence and terms of a temporary order to the institution's primary regulator. The Committee fully anticipates that the Treasury Department's regulations will permit such disclosures.

The legislation includes an amendment to the Right to Financial Privacy Act ("RFPA") to facilitate the operation of the Financial Crimes Enforcement Network ("FINCEN"). The Treasury Department created FINCEN to collect and analyze data to support money laundering and other financial crimes investigations. Currently, the RFPA permits records to be transferred to another Federal government agency only if the transferring agency certifies in writing that there is reason to believe that the records are relevant to a legitimate law enforcement inquiry within the jurisdiction of the receiving agency and only if the customer receives notice. Customer notice, however, may be delayed up to 180 days with a court order. The Committee is unaware of any case in which a court has denied a request for delay of customer notice.

With respect to criminal investigations, Congress adopted an exception to the general rule of customer notification for transfers of records to the Attorney General. The Anti-Drug Abuse Act of 1988 amended the RFPA to allow government agencies and departments, including depository institutions supervisory authorities, to transfer records to the Attorney General without customer notice with written certification by the transferring agency that the records may be relevant to a violation of Federal criminal law and that the records were obtained in the exercise of the agency's or department's supervisory or regulatory function. Furthermore, the records must be returned to the transferring agency when the investigation or prosecution is completed. This legislation expands the exception to permit the transfer of records to those divisions within the Treasury Department with responsibility for criminal investigations of money laundering, subject to the same restrictions as are applicable to the transfer of records to the Attorney General.

The Committee is mindful that the RFPA has been extensively amended in recent years. The Committee determined, as did Congress on certain previous occasions, not to modify RFPA to permit unrestricted interagency transfers if "there is reason to believe that the records are relevant to a matter within the jurisdiction of the receiving agency or appropriate for analysis by the receiving agency for law enforcement purposes." Such a modification would have permitted interagency transfer of personal records with little constraint on their use or the duration of use. Instead, the Committee attempted to craft an amendment to facilitate money laundering investigations but also preserve privacy rights protections by limiting the transfer of records only for the purpose of criminal investigations of money laundering and only for the duration of the investigations. The duration of the investigation should be reasonable and based on a legitimate belief that criminal activity has occurred.

The Bill requires the Department of the Treasury, in consultation with the Department of Justice and the Drug Enforcement Administration, to report to the Committee within 90 days on the advantages for money laundering enforcement and any disadvantages of changing the size, denominations, or color of U.S. currency, or of providing that the color of U.S. currency in circulation abroad be different from the color of U.S. currency in circulation in the United States. In recent years, several proposals have been made to change the U.S. currency as a way of thwarting money launderers. In a letter dated December 12, 1989, the Drug Enforcement Administration ("DEA") proposed to the Treasury Department that the Department consider printing more distinct currencies, one for domestic use and another for international use. The DEA proposed that the two currencies would be changed only at U.S. controlled financial institutions which are subject to transaction reporting and other money laundering deterrence requirements. The DEA proposal would make the domestic currency earned by drug dealers in the United States worthless abroad and so discourage the smuggling of cash out of the United States. Another proposal by former Secretary of the Treasury Donald Regan would provide for printing of new $50 and $100 bills of a different color or size. A very short notice period would precede the introduction of the new bills to prevent money launderers from exchanging their bills. Exchanges of large numbers of old bills for new bills would be reported to the Treasury Department. The Treasury Department agreed in May 1990 that it could undertake such a study.

The bill directs the Department of Justice to conduct a study of the extent to which compliance with the Bank Secrecy Act and money laundering statutes in cooperation with law enforcement authorities would be enhanced by issuing prosecutorial guidelines. Depository institutions have expressed concerns about criminal and civil liability for reporting suspicious transactions to law enforcement agencies. Banks are required by statute or regulation to file currency transactions reports, report suspicious and criminal activity, and avoid participation in structuring money laundering or receiving the proceeds of criminal activities. Bankers fear that, if they report suspicious activities or make transaction reports and continue to do business with the customer, they will be prosecuted by the government for participation in money laundering. Bankers argue, however, that, if they make such reports to the government and discontinue doing business with the customer, they may be subject to law suits for breach of contract or lender liability. The Right to Financial Privacy Act currently provides financial institutions a safe harbor from customer suits based on the financial institution's report to government authorities. Bankers argue, however, that the safe harbor may not protect them from suits when the bank has refused to do business with the customer after having made a report.

The Justice Department will consider adopting a program similar to the "Department of Justice Guidelines Regarding the Department of Defense Voluntary Disclosure Program." Those guidelines do not provide a guarantee that voluntary disclosure will prevent criminal prosecution. Instead, the guidelines identify a variety of factors that should be considered in determining whether to prosecute a "volunteer corporation." For example, the factors contained in the Justice Department's DOD Guidelines include: whether the disclosure was voluntary; whether the disclosure was made promptly after the illegal activity was discovered; whether the corporation had a preexisting compliance program designed to prevent illegal activity; whether the illegal activity was extensive or pervasive; whether upper-level corporate managers were involved in the illegal activity; and other factors.

As a policy and law enforcement matter, Congress, together with the law enforcement agencies, needs to consider whether banks should be encouraged to make reports and continue to do business with the customer about whom the report was made or whether banks should continue doing business with the customer after making the report to the government. By terminating business, the depository institution will not further money laundering by criminals. By continuing to do business, however, law enforcement agencies would have the opportunity to investigate the activity without alerting that customer and permitting money launderers to flee.

Creating a safe harbor for banks from third party suits raises additional questions. The Committee is aware of proposed amendments that would establish safe harbors from third party suits when a banker reports suspicious activity to the government and discontinues business with that customer. Under such a provision, an innocent customer could not recover damages in court, regardless of the bank's motive or purpose. This sort of provision would allow a bank to create its own safe harbor simply by making the report of "suspicious transactions," which currently are not defined. Nevertheless, the Committee is sympathetic to the current position of banks but requires more information in order to assess the problem and policy.

Another provision requires the President to report annually to Congress on efforts to ensure that countries adopt comprehensive measures against money laundering and cooperate in narcotics money laundering investigations, prosecutions and related forfeiture actions. The report must also include information on the extent to which drug producing and drug transit countries have adopted laws to prevent and detect narcotics-related money laundering and mechanisms to exchange financial records.

TITLE X—ASSET CONSERVATION AND DEPOSIT INSURANCE PROTECTION

A. Background

Title X, the Asset Conservation and Deposit Insurance Protection Act of 1991, provides measured relief for innocent Federal banking and lending entities, insured depository institutions, and other mortgage lenders from provisions of law imposing strict liability for the release or threatened release of hazardous substances into the environment. This relief only applies to an agency or lender whose actions did not pollute the property. This remedial legislation has been deemed crucial to the operations of the Federal Deposit Insurance Corporation (FDIC) and the Resolution Trust Corporation (RTC), and to the continued provision of credit for small businesses and other sectors of our economy. For example, L. William Seidman, Chairman of the FDIC and the RTC has testified that the legislation is "essential to our being able to operate in an efficient manner",[1] and that it is "really vital to our going ahead with selling properties * * *"[2]

This title of the bill is derived from provisions of S. 2827, introduced in the 101st Congress by Senator Garn, and S. 651, introduced by Senator Garn in the 102nd Congress. Hearings were held on these measures in the Senate Banking Committee on July 19, 1990, and June 12, 1991.

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[1] See, *e.g.*, Environmental Liability Issues, Hearings on S. 651 Before the Senate Committee on Banking, Housing and Urban Affairs, 102nd Cong. 1st Sess. 82 (1991).

[2] Deposit Insurance Reform and Financial Modernization, Hearings Before the Senate Committee on Banking, Housing and Urban Affairs, 101st Cong. 2nd Sess. 430 (1990).

At the July 19, 1990, hearing testimony was elicited from representatives of the Federal Deposit Insurance Corporation (FDIC), the Environmental Protection Agency (EPA), the American Bankers Association and the Environmental Defense Fund. At the June 12, 1991, hearing testimony was received from L. William Seidman, Chairman of the Federal Deposit Insurance Corporation (FDIC) and the Resolution Trust Corporation (RTC), Governor Edward Kelley of the Federal Reserve Board, Deputy Assistant Secretary J. French Hill of the Department of the Treasury, and representatives of the Environmental Protection Agency, Natural Resources Defense Council, American Bar Association, American Bankers Association, and Petroleum Marketers Association.

In addition, hearings on these issues were also held by the Senate Committee on Environment and Public Works, on April 11, 1991, and the Senate Committee on Small Business on June 18, 1991.

These hearings established that Federal banking and lending agencies, insured depository institutions, and other mortgage lenders are currently facing considerable potential liability for cleaning up environmental damage that was not caused by these entities, and that this liability is not only having a deleterious effect on the institutions involved but also exacerbating the credit crunch, particularly for small businesses. Furthermore, this potential liability threatens the safety and soundness of our deposit insurance funds, and resources available to the Resolution Trust Corporation.

Title X imposes no liability upon any party. Rather, it circumscribes liabilities that might be imposed under other provisions of law, so long as certain conditions are met. These conditions are designed to ensure that only innocent parties receive the benefit of the limitation. If the entity does not qualify under these conditions it cannot obtain the protection afforded under this title. Thus, if there is no liability that could be independently established under other law, failure to qualify for the protection of title X will not give rise to any liability.

B. CERCLA liability

One example of a Federal law imposing strict liability for environmental releases is the Comprehensive Environmental Response, Compensation and Liability Act [3] (CERCLA) also known as the "Superfund Act." The Superfund Act permits the EPA, State governments, or private parties to hold "responsible parties" liable for cleanup costs. Responsible parties include owners of contaminated property and operators of facilities regardless of fault or actual responsibility with respect to the disposal of the hazardous material. Government agencies that acquire property through the performance of their official duties (for example when they place a failed financial institution into receivership or undertake to liquidate the assets of a failed financial institution) can become liable for environmental pollution existing on the property. Likewise insured depository institutions and other mortgage lenders, who foreclose on their mortgages and assume title to property, may also be subject to liability for cleanup costs, regardless of fault.

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[3] Public Law 96-510 (1980), as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499 (1986).

Under the Superfund Act, the liability of a responsible party is "strict" liability.[4] This means that a finding of fault or causation is not necessary. Thus, the current owner of a site is liable for cleanup costs even if it was not responsible for the toxic material being on the land. Further, liability is "joint and several," meaning that the EPA, a State, or another "responsible party may seek to recover the cost (or contribution to the cost) of the cleanup from any one, more than one, or all other responsible parties.[5] The party with the most funds (deepest pocket) is often the one most pursued. In many cases these are financial institutions or Government agencies.

Secured creditor exception

The Superfund Act definition of an "owner or operator excludes a person who, without participating in the management of a facility, holds indicia of ownership primarily to protect his or her security interest in the property. Thus, Congress clearly intended to exempt lien and mortgage holders from liability, so long as they do not participate in the management decisions relating to the facility.

However, court interpretation of this exemption have created two problems for lending institutions. First, if a lending institution attempts to protect its loan by working with the borrower or enforcing any of its covenants short of foreclosure, the exemption might be lost.[6] Yet, working with the borrower to avoid default is not only accepted banking practice, but crucial to the safety and soundness of insured institutions. One court of appeals has even taken the position that a lender may lose the benefit of the secured creditor exception if it merely had the capacity to influence the borrower's hazardous waste disposal decisions.[7] While not all courts agree with this interpretation,[8] there is no clear judicial delineation of what a bank or other lender may do or not do in order to assist a troubled borrower. The state of the law is confused, and this uncertainty is having immediate, deleterious effects on our insured institutions and their lending practices.

Second, some courts have held that the secured creditor exemption does not apply once the lender forecloses on the mortgage and takes title to the property, even if the title was taken only to sell the property to a third party.[9] Thus, as a practical matter the secured creditor exemption is of little value, since it does not allow the effective exercise of the lender's remedies against a defaulting borrower.[10]

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[4] See, e.g. *New York v. Shore Realty Corp.*, 759 F.2d 1032 (2nd Cir. 1985).

[5] *Id.* See also, Klotz & Siakotos, "Lender Liability Under Federal and State Environmental Law, 92 Commercial Law Journal 275 (1987).

[6] See, *e.g.*, *United States* v. *Mirabile*, 15 Env'l L. Rep. 20, 994 (E.D. Pa. 1985), where the court noted the difficulty of "determining how far a secured creditor may go in protecting its financial interests before it can be said to have acted as an owner or operator within the meaning of the [Superfund] statute.

[7] United States v. Fleet Factors Corp., 901 F.2d 1550 (11th Cir. 1990), *cert. denied*, —— U.S. —— (1991).

[8] *In re Bergsoe Metal Corporation*, 910 F.2d 668 (9th Cir. 1990).

[9] See, *United States* v. *Maryland Bank & Trust Co.*, 632 F. Supp. 573 (D.Md. 1986) and *Guidice* v. *BFG Electroplating and Manufacturing Co.*, 732 F. Supp. 556 (W.D. Pa. 1989).

In sum, the Superfund Act clearly illustrates how environmental laws imposing strict liability for cleanup costs can impose unintended liability on Government agencies, insured depository institutions, and mortgage lenders. As will be described below, this liability is having a serious adverse impact.

C. Need for the legislation

The hearings before the Committee clearly established the need for remedial legislation in order to protect the deposit insurance funds, ensure the continued ability of Government banking and lending agencies to effectively perform their functions, and to maintain the flow of credit to all sectors of our economy.

Chairman Seidman testified that the FDIC strongly supports this legislation, and that without these provisions both the FDIC and RTC would be hampered in their efforts to resolve failed institutions at the lowest possible cost.[11] As of that hearing, the FDIC had already identified 238 properties with potential hazardous substance problems. The RTC had identified 480 pieces of real estate with potential environmental contamination.[12] These numbers were expected to increase as the FDIC and RTC acquired the assets of additional failed institutions.

Governor Edward Kelley of the Federal Reserve Board testified, based on information from the Federal Reserve Banks, that ". . . CERCLA liability is in fact affecting the availability of credit." [13] According to his testimony, lenders are becoming increasingly reluctant to provide credit even to otherwise creditworthy businesses that use hazardous substances, such as farmers, dry cleaners, service station owners and operators, and chemical and fertilizer producers. Since credit is crucial for the operation of these businesses, particularly small and medium-sized businesses, "[i]ncreased lender reluctance to provide funds to industries or areas that present a risk of CERCLA liability is likely to have a significant adverse effect on these industries or areas." [14] The lack of availability of credit to small and medium-sized businesses can have anticompetitive impacts upon segments of the economy. For example, evidence was adduced at the hearings that small, independent gasoline retailers are having to sell their stations, or go out of business, due in part to the lack of credit for underground storage tank replacements.

Further, the lack of credit may also frustrate environmental interests. Witnesses cited cases of companies that are unable to borrow to modernize operations or install the latest devices to prevent or control environmentally damaging releases, or even to cleanup existing problems. Moreover, companies that cease operations because they cannot obtain credit will not be able to make any meaningful contribution to environmental cleanup costs. Consequently, the current state of the law actually frustrates the goal of having a cleaner environment and increases the cleanup costs that must be borne by the federal or state governments or other private parties.

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[10] Other potential defenses for lenders under the Superfund Act, such as the so-called "innocent landowners defense, have also proven to be illusory as a practical matter.

[11] Environmental Lender Liability Issues, Hearings on S.651 Before the Senate Committee on Banking, Housing and Urban Affairs, 102nd Cong. 1st Sess. 51–52, 56 (1991).

[12] *Id.*

[13] *Id.* at 97, 102–103.

[14] *Id.*

Recent surveys by the American Bankers Association (ABA), the Independent Bankers Association of American (IBAA), and the Petroleum Marketers Association support these conclusions. The ABA survey found that 88 percent of community banks responding indicated that they have changed their lending procedures, including a reluctance to lend to certain industrial groups, in an effort to avoid environmental liability. In particular, the survey found that 62.5 percent of respondents rejected loan applications or potential borrowers based on the possibility of environmental liability.

The IBAA survey of community banks indicated that 85 percent of the respondents have changed their lending practices, and over 70 percent of these institutions will not make loans to certain businesses based on environmental concerns.

The Petroleum Marketers Association study indicated that one-third of its member companies had loans rejected by financial institutions, and that concerns about potential environmental liability accounted for the vast majority of the denials.

D. Description of title X

Title X limits the liability of federally-insured depository institutions (and affiliated leasing companies) under any Federal law, such as CERCLA or the Resource Conservation and Recovery Act, that imposes strict liability for environmental releases. The limitation covers liability relating to: (i) property acquired through foreclosure; (ii) property held in a fiduciary capacity; (iii) property leased to another pursuant to a lease agreement that is functionally equivalent to an extension of credit; or (iv) property that is otherwise subject to the financial control or oversight of the institution pursuant to the terms of an extension of credit.

As previously noted, title X does not impose liability on any party. Moreover, by expressly limiting the liability of certain parties under specified conditions, the Committee rejects any inference that other parties are liable. For example, the fiduciary provisions of title X, by their terms, only apply to insured depository institutions. No implication is intended that non-depository institution fiduciaries would be liable under any strict liability environmental statutes.

The term "property" includes real, personal, and mixed property. The term "property acquired through foreclosure" includes the acquisition of property held as collateral for an extension of credit, through formal or informal means, so long as the depository institution or lender seeks to sell or otherwise divest the property at the earliest practical, commercially reasonable time, taking into account market conditions and legal requirements. (See, e.g., U.C.C. § 9-504(3).)

Property acquired through foreclosure also includes property repossessed or returned to a lessor at the termination of a lease term, or following the breach of a lease agreement.

Mortgage lenders

Mortgage lenders (companies other than depository institutions that are engaged in the business of making mortgage loans to others), or companies that insure or guarantee mortgage loans, are granted a similar limitation on their liability under Federal law, with respect to property acquired through foreclosure and property subject to their financial control or oversight. The term "mortgage lender" is defined to include certain Government-sponsored enterprises that are required to make a secondary market in mortgage loans.

Actual benefit limitation

In general, title X provides that the liability of innocent depository institutions and mortgage lenders is limited to the "actual benefit" conferred on the institution or lender by a removal, remedial, response or other corrective action, so long as such action is taken pursuant to and consistent with the requirements of applicable Federal law, such as the Superfund Act or the Resource Conservation and Recovery Act.

The actual benefit conferred on an institution or lender is equal to the net gain, if any, realized by such party as a result of the required corrective action. In no case may the actual benefit realized exceed the fair market value of the property following the required cleanup. Further, a reduction in actual or potential liability is not considered to be an actual benefit realized. Rather, the "actual benefit realized" is the net increased market value of the property, realized by the institution or lender upon its sale or other disposition, and attributable to the action of others in conducting a legally mandated removal, remedial, response or corrective action taken in accordance with Federal law.

This concept may be illustrated by a few examples:

(1) A depository institution makes a $1 million mortgage loan on property with a fair market value at the time of the loan of $1.5 million. Several years later an industrial accident spills hazardous chemicals. The borrower defaults and the lender takes possession of the collateral, that now has a fair market value of 0. After a $5 million cleanup performed by the State, the fair market value of the property is increased from 0 to $1.5 million. The lender then sells the property for its full market value, and realizes $1.5 million. The lender's actual benefit realized from the cleanup action is $1.5 million, and, therefore, its liability, if any, would be capped at $1.5 million rather than the $5 million total cleanup cost.

(2) A lender makes a $200,000 loan secured by a service station with a fair market value of $300,000. After the loan is made a tanker truck discharges a thousand gallons of gasoline into the wrong pipe and pollutes the soil. The cleanup cost is $175,000. The borrower defaults and the lender acquires the property through a foreclosure sale. Prior to the cleanup the fair market value was $125,000. The service station is sold by the lender and it receives the fair market value of $250,000. The actual benefit realized from the cleanup is $125,000, and that would be the limit of its liability, if any.

(3) A depository institution holds title to farm property as a trustee, for the benefit of the settlor's minor children, and receives a fixed annual fee for this service. The farm contains a storage tank for insecticides, and this tank is found to be leaking chemicals into the ground. The cost of the cleanup is $500,000. The depository institution, as a trustee, receives no benefit from the increased value of the farm, and thus there would be no liability.

Safe harbors

In addition to the general limitation on liability, the bill also delineates certain "safe harbors." Depository institutions or mortgage lenders are protected from liability that might otherwise be alleged on the basis of having engaged in one or more of the activities described in these safe harbors. The safe harbors are not requirements. The failure to engage in any of the activities described as a safe harbor does not affect protections otherwise afforded by the title.

The safe harbors are: (i) holding a security interest or abandoning or relinquishing (in the case of personal property) a security interest prior to foreclosure; (ii) having the unexercised capacity to influence operations at or on property in which the party has a security interest; (iii) including in the extension of credit terms or conditions relating to the borrower's compliance with environmental laws; (iv) monitoring or enforcing the terms and conditions of the extension of credit; (v) monitoring or undertaking one or more inspections of the property; (vi) requiring the borrower to cleanup the property prior to or during the term of the extension of credit; (vii) providing financial or other advice or counseling in an effort to mitigate, prevent or cure default or diminution in the value of the property; (viii) restructuring, renegotiating or otherwise altering the terms and conditions of the extension of credit; (ix) acquiring the property through foreclosure; (x) exercising other remedies at law or in equity that might be available for the borrower's breach of any term or condition of the extension of credit.

An "extension of credit" includes a lease that is functionally equivalent to a secured loan, whereby the lessor expects to realize a return of its full investment in the leased property and does not, during the lease term, control the daily operation or maintenance of such property, as under 12 C.F.R. § Part 23; 12 C.F.R. § 225.25(b)(5)).

An "extension of credit" also includes the making or renewal of any loan, a granting of a line of credit or extending credit in any manner, such as an advance by means of an overdraft or the issuance of a standby letter of credit. (See, e.g. 12 C.F.R. § 215.3).

Exclusions

The protections afforded by title X do not apply to a depository institution or mortgage lender that directly caused the release of the hazardous substance that gave rise to the liability.

The protection also does not apply to any party that, following the foreclosure action, failed to exercise due care to protect the public health and safety with respect to identified releases of hazardous substances that form the basis for the liability. This is intended to ensure the continuation of prudent behavior by the lender after the foreclosure, while continuing to afford protection for the creditor for potentially catastrophic liability. In this context, "due care" refers to the actions that a reasonably prudent person would take in order to prevent an immediate and actual threat to the public health and safety, but does not require that the party undertake a removal or remedial action that might be necessary to protect the public health and safety over a longer period of time. For example, if a lender forecloses on property containing a dump contaminated with toxic chemicals, the due care requirement might be satisfied if the lender notified appropriate authorities that the contamination was present, and constructed a fence around the site to prevent other parties from coming into contact with the waste. The Committee does not intend that the lender would be required to remove the hazardous material and contaminated soil in this situation. Likewise, if a lender acquired property through foreclosure and discovered a ruptured pipe spilling out toxic pollutants, the due care requirement would require the lender to shut off the flow through the pipe, and take other actions to prevent immediate health risks to those in close proximity to the contamination. It would not require a full removal or remedial action.

Finally, the bill's benefits are not provided to a depository institution or mortgage lender that actively directs or conducts business operations that result in a release or threatened release of a hazardous substance that forms the basis for liability. The intent of this provision is to make clear that, if the institution or lender is so intimately involved in directing business operations resulting in the release giving rise to the liability that it becomes, in effect, an operator of the business, it should be subject to the same liability rules as other operators. However, the release giving rise to the liability must occur during the period that the institution or lender is, in effect, "operating" the business. Thus, for example, if the lender temporarily takes over the operations of a business post-foreclosure in order to maintain its value pending sale to a third party, this exclusion will not apply unless the release occurred during the period in which the lender was actively directing the operations that resulted in the release. If the release occurred pre-foreclosure, the protections against liability would still apply.

Governmental entities

Title X also provides certain Federal banking and lending agencies with limited immunity from liability under Federal, State, or local law that imposes strict liability for environmental releases. The protections apply to enumerated Federal banking and lending entities, such as the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, the Small Business Administration and the Resolution Trust Corporation, whether these governmental entities are acting in a conservatorship, receivership or corporate capacity, or through employees or agents.

The immunity only applies to property (or a right or interest therein) acquired: (i) in connection with the exercise of receivership or conservatorship functions; (ii) in connection with the provision of loans or other assistance; and (iii) in connection with property received in civil and criminal proceedings. It does not apply to property held or owned by any Governmental entity in a proprietary capacity, such as an agency office building or computer center.

As with depository institutions and mortgage lenders, the protection afforded by this bill does not apply if the Governmental entity caused the environmental release that forms the basis for the liability, or if it failed to exercise due care to protect the public health and safety with respect to identified releases of hazardous substances. The explanation of what is meant by "due care" with respect to depository institutions and mortgage lenders applies equally with respect to Governmental entities.

Subsequent purchasers

Since these Governmental agencies acquire the property pursuant to their mandated liquidation, regulatory, or lending functions and must dispose of it rather than holding or investing in property, the protection would have little value if it could not be passed on to an innocent purchaser. Therefore, the bill provides that the immunity applies to the next subsequent purchaser of the property from the Government, provided that this purchaser was not previously involved in the pollution, and is not related to any person previously involved with the pollution. In addition, the subsequent purchaser must also exercise due care to protect the public health and safety with respect to identified releases of hazardous substances that give rise to a removal, remedial, response or other corrective action. Again, the previous explanation of what is meant by this "due care" standard is equally applicable here.

This title also provides a waiver from certain lien and covenant requirements found in current law that may adversely affect the ability of the Government to sell property.

Emergency response actions

The bill provides that Federal banking and lending agencies may take actions in response to an emergency without liability, unless the agency is grossly negligent.

Environmental assessments

The bill provides that the Federal banking agencies and the Department of Housing and Urban Development must, after consulting with the EPA, promulgate regulations that require insured depository institutions and mortgage lenders to develop and implement adequate procedures to evaluate actual and potential environmental risks associated with collateral or leased property prior to making an extension of credit. These regulations may provide for different types of environmental assessments in order to account for different levels of risk that may be posed by different classes of collateral or leased property. Thus, for example, a very thorough assessment might be appropriate before an institution makes a loan secured by a chemical plant, while a minimal checklist might be sufficient when a loan is secured by a grocery store or for certain other financing. Similarly, the agencies might find that a minimal or even no environmental assessment might be appropriate for residential properties if those properties are not located in areas of known or suspected environmental risk.

TITLE XI—MISCELLANEOUS

SUBTITLE A—PRESIDENTIAL INSURANCE COMMISSION

The Committee recognizes the importance to the American financial system of the property/casualty insurance, life insurance, health insurance, and reinsurance industries. These industries play a major and vital role in capital formation and lending in the United States economy, as well as in providing security and peace of mind for individuals and businesses. At the end of 1989, property/casualty, life and health insurers combined, managed nearly $1.8 trillion of assets in the United States. This represents nearly 18 percent of the financial assets of all non-governmental intermediaries in the United States. These insurers controlled sizeable amounts of various important assets, including 50.7 percent of all United States-held corporate and foreign bonds, 13.8 percent of all United States Treasury securities, 12.2 percent of mortgages, and 14.7 percent of corporate equities.

Recent months have seen a succession of worrying developments concerning the insurance industries. Four large life insurers—Executive Life, First Capital Life, Monarch Life and Mutual Benefit Life—have been taken over by state regulators in the past six months. Executive Life and First Capital Life were burdened by an excessive concentration in junk bond portfolios, which are now worth a fraction of their cost. While junk bonds constitute less than 6 percent of life insurers' assets overall, Executive Life, for example, had by far the industry's largest junk bond portfolio—some 64 percent of its assets.

By contrast, Mutual Benefit Life, the nation's 18th largest life insurer, failed in July of 1991, due to a loss of confidence in its real estate portfolio. Soon thereafter, private rating firms downgraded the claims paying ability of several major life insurers, largely due to concerns about their real estate loans. On July 19, Moody's bond rating agency lowered the ratings of six major insurers. Yet another major insurer, the Equitable, recently required a $1 billion infusion of foreign capital to recover from real estate losses.

Particularly in light of the need to recapitalize first the Federal Savings and Loan Insurance Corporation (now the Savings Association Insurance Fund) and now the Bank Insurance Fund, these events have raised the level of concern about the financial health of the insurance industries. Moreover, they have raised the specter that policyholders and annuitants of these companies may lose some of their benefits.

The Committee believes that a full inquiry into these events and concerns is essential, given the importance of the insurance industry to our economy, to the ability of individuals and companies to conduct their daily lives and businesses, and to the essentiality of insurers' ability to provide the benefits promised to consumers when an insured event occurs. Subtitle A of Title XI incorporates the provisions of S. 1276, the Presidential Insurance Commission Act. The bill, which was originally introduced by Senator Dodd and Chairman Riegle, established a Presidential Commission to review and report on the financial health of the property/casualty insurance, life insurance, health insurance, and reinsurance industries. The Commission's tasks will include consideration of the strength of state guaranty funds, the impact of changes in the state and Federal liability systems, the effect of the McCarran-Ferguson Act and state regulation on consumer protection and competition, the impact of environmental and catastrophic dangers, and the appropriateness of the present allocation of federal and state responsibilities in regulating insurance and the underlying liability systems.

The mandate of the Commission is broad because the Committee believes that the financial strength of the industry—and, thereby, its ability to provide consumers with an array of products at competitive prices and to deliver insurance benefits when coverage is triggered—cannot be separated from all of the issues outlined above.

It takes only one discrete example to understand the differences between depository institutions and insurers and to appreciate that reforms of the insurance industry will have to be tailored to its often highly diverse elements. Thus, the banking industry's problems are largely the result of bad assets—too much lending to the governments of lesser developed countries, to the oil and agricultural sectors and, most recently, to the commercial real estate industry. Similarly, some life insurers have recently experienced problems with their real estate portfolios. By contrast, the solvency of the property/casualty industry is tied to unknown liabilities associated with such longtail products as environmental and product liability. How does an industry price a product when the event that could trigger liability will occur some time long in the future when the rules governing liability may have changed entirely?

It has been difficult for the Congress to address these issues for two main reasons. First, the insurance industry has traditionally been regulated at the state level and most of the information about the industry resides there. Second, congressional consideration of a wide variety of insurance issues has taken place in multiple committees in both the Senate and the House.

The Presidential Insurance Commission will be composed of all the relevant Federal officials—the Secretary of the Treasury, the Attorney General, the Secretary of Commerce, the Secretary of Transportation, and the Chairman of the Federal Trade Commission. In addition, the President will select 10 other members with expertise in insurance, state regulation of insurance, financial services, antitrust, liability law and consumer issues. At least two of these members shall have expertise in consumer issues.

It is the Committee's hope that the Presidential Insurance Commission will provide a blueprint for action to assure that the insurance industries are financially healthy. Healthy insurance industries will be able to assure consumers of the availability of adequate insurance coverage when an insured event occurs, and of the best possible range of products at competitive prices.

SUBTITLE B—GENERAL PROVISIONS

Credit unions

FIRREA required the GAO to undertake a comprehensive study of the credit union system, which as of June 30, 1990 included 13,100 federally insured credit unions with aggregate assets of over $175 billion. The GAO study, released in July 1991 (*Credit Unions: Reforms for Ensuring Future Soundness*), found that "[t]he condition of today's federally insured credit unions is better than that of banks and thrifts." (*Id.* at 3) Credit unions' average capital was 7.3% of assets as of June 30, 1990, compared to 6.4% for banks. Credit unions rate of return on assets was .9%, compared to .69% for banks. (*Id.*) The GAO concluded that "[c]redit unions are in a relatively favorable financial position." (*Id.* at 35) The National Credit Union Share Insurance Fund (the "Share Insurance Fund") is similarly healthier than the Bank Insurance Fund. The Share Insurance Fund's reserve balance as a percent of insured shares was 1.25 as of December 31, 1990. (*Id.*) The GAO estimates that the Bank Insurance Fund's equity in comparison was no higher than .26 percent of insured deposits as of that date.

While recognizing that federally insured credit unions are generally healthy, the GAO identified some areas relating to their regulation and insurance that can be improved. The GAO recommended that minimum capital levels be established for credit unions. Credit unions currently do not have minimum capital requirements of the kind applicable to other federally insured depository institutions. As cooperatives, credit unions cannot sell stock; they can raise capital only through retained earnings. The Federal Credit Union Act requires Federal credit unions to set aside percentages of gross income until they reach certain levels of reserves, but there is presently no assurance that the reserves will ever reach the stated level of 6% of assets.

The GAO noted, among other things, that the loans to one borrower restriction applicable to credit unions "allows them much greater risk-taking [than that applicable to banks and thrifts] because it does not require as much asset diversification." (*Id.* at 68) The Federal Credit Union Act limits Federal credit union loans to one borrower to 10 percent of the credit union's unimpaired capital and surplus. Because credit unions classify shares as equity, this limit is a percentage of the sum of capital plus deposit liabilities and not just a percentage of capital. National banks, in contrast, may not lend more than 15 percent of unimpaired capital and paid-in surplus to a single borrower. FIRREA generally extended this lending limit to savings and loan institutions as well.

Credit unions recapitalized the Share Insurance Fund in January 1985 by depositing 1 percent of their insured shares in the fund. Credit unions continue to carry this 1 percent deposit on their books as an asset. The GAO recommended that credit unions be required to expense their 1 percent deposit over a period of years. The Administration's proposal included this recommendation that credit unions be required to write off their 1 percent deposit and further proposed that one of the three members of the National Credit Union Administration be a Treasury official. The Committee took a different approach, designed to yield a greater gain in safety and soundness protections while taking account of credit unions' distinctive character as cooperative institutions. A credit union in operation for more than 4 years and having assets of at least $500,000 currently must set aside 5 percent of its gross income until the credit union's reserves equal 6 percent of total outstanding loans and risk assets. Under the bill, a credit union that had reached the 6 percent level would set aside 3.5 percent of gross income until its reserves reach 7 percent of total outstanding loans and risk assets. This, together with other reforms, responds to the concerns about alleged double-counting resulting from credit unions carrying their 1 percent deposit with the Share Insurance Fund as an asset on their books. The NCUA will also establish minimum capital standards for credit unions in existence at least five years.

Title XI makes certain additional improvements to the laws governing credit unions along the lines recommended by the GAO. These changes will strengthen safety and soundness while continuing to recognize that credit unions are unique among depository institutions. The loans-to-one-borrower limit for credit unions will be tightened to the greater of 20 percent of capital, 1.5 percent of assets or $100,000. Credit unions of which a substantial proportion of the members are farmers or fishermen may make loans of up to 3 percent of their assets for farming and fishing purposes to persons deriving their livelihood primarily by farming and fishing. These changes in the loan-to-one-borrower limit are not retroactive; they do not affect existing loans or loan commitments.

Rules to assure the soundness of the Share Insurance Fund are also enhanced. The fund's reserves currently cannot exceed 1.3 percent of insured shares and the insurance premium is capped at one-twelfth of 1 percent of insured shares. The bill requires that, if the fund's equity level falls below 1.2 percent of insured shares, the NCUA must assess a premium sufficient to restore the Fund to and maintain it at the 1.2 percent level. The premium may exceed one-twelfth of one percent only by unanimous vote of the NCUA Board of Directors. If the fund's equity level is at least 1.2 percent and below 1.3 percent, the NCUA may assess a premium only by unanimous vote in an amount not exceeding one-twelfth of one percent; the premium may not exceed the amount necessary to restore the fund to the 1.3 percent level.

Corporate credit unions are institutions whose members are other credit unions. They provide financial services to their members, by lending to them as needed for liquidity and by accepting unloaned deposits for investment. Industry-wide, credit unions invest 10% of their assets in corporate credit unions: as of June 30, 1990, $20.4 billion of federally insured credit union funds were deposited in 43 corporate credit unions. While this provides an outlet for surplus credit union funds, it poses a risk as well should a corporate credit union fail. The bill in effect requires corporate credit unions to be federally insured if they accept deposits from federally insured credit unions, and it gives the NCUA the same regulatory authority over corporate credit unions as it has over Federal credit unions. This incorporates the GAO's recommendation that federally-insured credit unions be permitted to invest in corporate credit unions only if they are also federally-insured. The bill further includes the GAO's recommendations that the NCUA establish loans-to-one-borrower limits and minimum capital requirements for corporate credit unions.

As recommended by the GAO, the bill reduces the Central Liquidity Fund's borrowing authority and repeals an obsolete provision purporting to allow credit unions to borrow from the Farm Credit System. The Committee notes that credit unions offering share draft accounts may use the Federal Reserve discount window—to meet occasional needs for short-term liquidity—on the same basis as other depository institutions.

The NCUA's enforcement authority will be strengthened in two ways. First, the NCUA may, by unanimous vote of its board, close an insolvent state-chartered credit union under certain circumstances if state regulators refuse to act. This provision is consistent with the FDIC's authority under Title II of the bill. Second, the NCUA's authority to remove a credit union insider is also enhanced, consistent with the changes made for bank and thrift insiders discussed below.

Strengthening removal and prohibition authority

The authority of the Federal banking agencies to remove insiders of insured depository institutions is enhanced in a manner similar to that of the NCUA with respect to credit unions. Currently a Federal banking agency may remove an institution-affiliated party if it reaches the same three-part determination currently required of the NCUA. The agency must first determine that an institution-affiliated party has violated a law, regulation, final cease-and-desist order, or written agreement, has engaged or participated in an unsafe or unsound practice, or has breached his fiduciary duty. Second, the agency must determine that there is a financial aspect to the violation, practice or breach whether in terms of harm to the insured institution or benefit to the affiliated party. Third, the agency must also determine that the violation, practice or breach involves personal dishonesty or a disregard for the safety or soundness of the insured institution. The bill allows a Federal banking agency to remove a party if it determines that one of the conditions of the second or third part of the test are met; the second and third parts of the test need not both be met.

Emergency liquidity

The Federal Reserve System serves as "lender of last resort" for its member banks, assuring the liquidity of the banking system by making discount advances through the Federal Reserve Banks. To accomplish this goal, the Federal Reserve Banks have statutory authority to provide short-term credit to commercial banks by discounting notes, drafts and bills of exchange drawn for agricultural, industrial or commercial purposes. The Federal Reserve Act specifically provides that notes, drafts or bills covering investments in or issued for the purpose of trading in stocks, bonds or other investment securities may not be used for discount advances.

To promote liquidity in the general economy, the Federal Reserve Act gives the Federal Reserve System authority to serve as "lender of last resort" for borrowers other than member banks. While the provision has not been used since the 1930's, the statute provides that in unusual and exigent circumstances the Federal Reserve Board, by the affirmative vote of at least 5 governors, may authorize a Federal Reserve Bank to discount notes, drafts and bills of exchange for any individual, partnership or corporation. The individual, partnership or corporation must demonstrate its inability to secure adequate credit elsewhere. As for member banks, the borrowings must be secured and stocks, bonds and investment securities are not eligible for discount.

Stocks, bonds and investment securities not eligible for discount are the greatest share of the assets of the nation's securities firms. Because these assets are not eligible for discount, the Federal Reserve is limited in its ability to make discount advances to securities firms in emergency situations. The October 1987 market break, for example, sent waves of anxiety through the investment community. In such an emergency the Federal Reserve must be able to ensure the liquidity of the financial system, including if necessary by the use of advances to securities firms.

Title XI therefore amends the Federal Reserve Act to allow stocks, bonds and other securities to be used for discount advances by borrowers other than member banks. This clarifies that access to liquidity in special circumstances can be made available directly to a securities dealer to help preserve market liquidity and avoid market disruption. The borrowers must still demonstrate their inability to obtain credit elsewhere and the instruments must still be secured to the satisfaction of the Federal Reserve Bank. With the increasing interdependence of our financial markets, it is essential that the Federal Reserve System have authority and flexibility to respond promptly and effectively in unusual and exigent circumstances that might disrupt the financial system and markets.

Securities investor disclosure provisions

The Securities Investor Protection Corporation ("SIPC") is a nonprofit corporation established by Congress to protect the securities and cash in the customer accounts of member brokerage firms against the failure of those firms. This section requires certain disclosure be made to retail customers engaged either in securities transactions or in transactions which might appear, especially to an uninformed customer, to be securities-related. A broker-dealer or its associate must disclose its membership status in the SIPC. It must also provide a description of SIPC coverage under the Securities Investment and Disclosure Act, including the transactions and instruments that are not protected and a statement that the Act does not protect against a decline in the market value of securities. A person other than a natural person associated with a broker-dealer that is not a SIPC member must obtain the customer's signature acknowledging receipt of the required disclosure.

Disclosing information on SIPC to customers will continue the tradition of consumer awareness which is an important principle in the securities industry and allow consumers to make informed investment decisions. Obtaining customers' signatures when broker-dealers are not protected by SIPC assures that customers most at risk when their firm fails are adequately informed. The need for information has been shown in several recent cases where customers of a registered broker-dealer purchased non-insured products from non-SIPC-member affiliates of the broker-dealer. These customers, who believed they were engaging in covered securities transactions, were actually ineligible for coverage when the broker-dealer failed. Where the possibility for customer confusion as to the nature and coverage of their transactions exists, disclosure is especially important. Under rules to be drafted by the SEC, such disclosure will be provided by broker-dealers and the appropriate affiliates to the customers who need it most. The SEC is given broad authority to issue exemptions from the provision, in order to address the problems noted without placing an unnecessary burden on the industry.

Hiring and compensation authority of SEC

Title XI addresses the SEC's problems in attracting and retaining qualified lawyers, accountants and other professionals, as well as support staff. In a study prepared by the Committee, the SEC noted: "The Commission is experiencing severe problems recruiting and retaining a sufficient number of staff for its major professional groups." Half of all attorneys leave the SEC within three years. The study suggests this problem has accelerated in recent years, as the disparity in pay widened between private law firms and the SEC.

For example, while the SEC study reported that first year SEC lawyers in 1987 were paid $27,172, starting salaries in top New York firms were $71,000 and in top Washington firms $57,000 (and higher for Washington branches of New York firms). Currently, starting salaries at some major firms top $80,000 annually. With respect to accountants, the study compared SEC salaries with the private sector salaries paid to accountants leaving the SEC in 1988. At GS-11, the SEC salary of $27,716 was, on average, topped by a private sector salary of $40,000. For more experienced accountants, the gap was wider. A GS-15 SEC accountant who received $54,907 from the SEC, on leaving was paid an average of $90,000 in the private sector.

With passage of FIRREA, the Federal banking regulators under the jurisdiction of the Banking Committee are authorized to set pay scales for their own employees. SEC officials have expressed concern that, as a result of FIRREA, they not only will lose staff to the private sector but to other financial regulators as well. Title XI accordingly gives the SEC authority similar to the banking regulators to fix the compensation of SEC employees, without regard to the provisions of Title V of the U.S. Code, which governs the classification and pay rates of government employees. These provisions are essentially similar to those contained in FIRREA. The legislation amends Section 4(b) of the Securities Exchange Act of 1934 to authorize the Commission to set and adjust rates of basic pay for employees without regard to the provisions of Chapter 51 or Subchapter 53 of Title V. In addition, the legislation would relieve the Commission's Senior Executive Service employees from the pay scales set by subchapter VIII of Chapter 53, and would relieve the Commission's Merit Pay employees from the pay and award provisions in Chapter 54 of Title V.

In addition to these measures, the Committee urges the Commission to use its available resources to maintain and enhance a work environment conducive to longer-term tenures by professional staff. In particular, it is appropriate for the Commission to establish Commission-wide training and continuing education programs and provide the opportunity for the Commission staff to be exposed to the full range of Commission responsibilities.

Time limitation on private rights of action under the Securities Exchange Act of 1934

Prior to June 1991, there was no uniform statute of limitations for cases brought under the implied right of action of section 10(b) of the Securities Exchange Act. The Federal circuit courts were divided on this issue. Some circuit courts held that the state statute of limitations for fraud cases in the state where the plaintiff resided was the applicable statute. Other circuit courts looked to the express causes of action provided in the Securities Act or the Exchange Act. On June 20, 1991, the United States Supreme Court held in *Lampf v. Gilbertson*, 111 S. Ct. 2773 (1991), that the statute of limitations applicable to implied rights of action under section 10(b) is one year after the plaintiff knew of the violation and in no event more than 3 years after the violation occurred.

Protection of investors from securities fraud is critical to maintaining confidence in and the liquidity of the securities markets. The Supreme Court's decision in *Lampf* does not allow individual investors adequate time to discover and pursue violations of securities laws. The SEC has stated that the Court's decision in *Lampf* "imposes an overly stringent time limit on investors who often are the victims of fraudulent activity that has been deliberately concealed from them." Testifying before the Banking Committee on July 25, 1991, Chairman Breeden stated "the time frame set forth in the [Supreme] Court's decision is unrealistically short and will do undue damage to the ability of private litigation." He indicated that he believes the Court's decision should be altered by specific legislation.

In order to ensure that securities markets are fair and attract individual investors, Title XI contains a provision originally introduced by Senator Bryan as S.1533 that directly addresses the Supreme Court's decision. The provision will amend the Securities Exchange Act to state that the statute of limitations for all implied rights of action is 2 years after the plaintiff knew of the securities law violation, but in no event more than 5 years after the violation occurred. In a letter to Senator Bryan, SEC Chairman Richard Breeden stated that he strongly supports adoption of this bill in part because "[a]doption of these measures would give private litigants a more realistic time frame in which to discover that they have been defrauded, while also accommodating legitimate interests in providing finality to business transactions and avoiding stale claims."

The 2 year period is measured from the date of the plaintiff's actual discovery of the facts constituting the violation, not from a date when discovery arguably should have been made. Only a plaintiff whom a defendant can prove knew of the fraud or knew of the facts demonstrating the fraud more than two years prior to the filing of the complaint would be affected by this provision.

The provision's effective date applies the new statute of limitations to all proceedings pending on or commenced after June 19, 1991, protecting pending law suits that would be dismissed under the Supreme Court's decision. The legislation also restores certain law suits that have been dismissed as a result of the Supreme Court's decision. Any private civil action arising from a violation of the Act and dismissed as time barred after June 19, 1991 may be refiled within 60 days of the enactment of this bill if the action would have been timely under applicable law as of June 19, 1991 in the jurisdiction where it was dismissed and if the action would be timely under the new statute of limitations. In determining whether an action would have been timely filed under the laws applicable in the jurisdiction, the United States district courts should look to the limitation period they would have applied on June 19, 1991, whether borrowed from state law or derived from Federal common law.

The legislation will not apply to any enforcement actions brought under the Securities Exchange Act by the SEC. SEC actions are not intended to be subject to any statute of limitations unless expressly provided by statute.

Conversions during moratorium

FIRREA imposed a five year moratorium on "conversion transactions." Conversion transactions were defined as an institution's conversion from Bank Insurance Fund membership to Savings Association Insurance Fund membership or vice versa, the merger or consolidation of a Bank Insurance Fund member with a Savings Association Insurance Fund member, or a transfer of deposit liabilities from a member of one Insurance Fund to a member of the other Insurance Fund. The FDIC was given authority to exempt from the moratorium any conversion transaction that affected an insubstantial portion of an insured institution's liabilities or that occurred in connection with the acquisition of a troubled institution.

This Title includes a provision allowing the FDIC to approve a merger or consolidation or transfer of deposit liabilities if the resulting or assuming institution agrees to make pro rata insurance premium payments to both the Bank Insurance Fund and the Savings Association Insurance Fund based on the percentage of the combined deposits assessable by each Insurance Fund at the time of the transaction. Any losses resulting from any failure of the combined institution will be similarly apportioned between the two Insurance Funds. An institution participating in such a conversion transaction need not pay exit and entrance fees to the Insurance Funds.

Qualified thrift lender test

As reenacted by FIRREA, the "qualified thrift lender test" requires a thrift institution to keep a percentage of its assets in housing-related loans and property in order to qualify for Federal Home Loan Bank advances and greater activities and branching powers. Title XI eases the qualified thrift lender test in a few ways. The required percentage of "qualified thrift assets" that a thrift must maintain is reduced from 70% to 65% of its "portfolio assets."

("Qualified thrift assets" refers to an institution's aggregate amount of loans, equity investments, or securities related to residential real estate. "Portfolio assets" refers to its total assets less goodwill and other intangible assets, the value of property used by the institution to conduct its business, and a percentage of liquid assets up to 10 percent of total assets.) The percentage of liquid assets a thrift may deduct from its portfolio assets before applying the 65% test is increased from 10% to 20%. The amount of consumer loans that may be treated as qualified thrift assets is increased from 5% to 10% of the thrift's portfolio assets. Federal Home Loan Bank stock will count without limit as a qualified thrift asset unless double-counting would result. Savings association with total assets of less than $1 billion will be allowed to conduct monthly averaging of qualified thrift assets rather than daily or weekly averaging. These changes, while maintaining the orientation of thrift institutions toward residential housing lending, will allow thrifts more flexibility to diversify their assets without losing any preferences currently available to qualified thrift lenders.

Limiting liability for foreign deposits

Recent court decisions suggest that United States banks may be liable for deposits in foreign branches even when unilateral action by foreign governments or acts of war or civil strife prevent the banks from repaying. By letter dated July 30, 1991, Federal Reserve Board Chairman Alan Greenspan noted "it has long been the Federal Reserve's understanding, as expressed in regulations and other interpretations of law, that the head office of a U.S. bank is not responsible for foreign sovereign risk affecting deposits in foreign branches unless the bank expressly agrees to be liable in those circumstances." He noted that this understanding is shared by the FDIC and the Office of the Comptroller of the Currency and has been expressed in legal briefs filed in United States courts by the Departments of State, Treasury and Justice.

Title XI amends the Federal Reserve Act and the Federal Deposit Insurance Act to provide that a bank is not required to repay a deposit made at a foreign branch if the branch cannot repay the deposit because of war, insurrection, civil strife or an action by a foreign government unless the bank has expressly agreed in writing to repay the deposit under those circumstances. In his letter Chairman Greenspan expressed support for legislation to resolve this uncertainty. The provision adopted by the Committee is not intended to affect any claim arising out of events such as are described above that occurred prior to the date of enactment of this legislation.

Providing services to insured depository institutions

Title XI clarifies the effect of transfers of certain assets of failed savings associations by the Resolution Trust Corportion acting as conservator or receiver. It requires any person who was obligated to provide services to a savings association at the time that the association entered into conservatorship or receivership to continue to provide those services to any person to whom the right to receive those services was transferrred by the RTC after the date of enactment of FIRREA. These rights might include, among others, rights arising under contracts, membership rights in associations, service corporations and the like. Under this provision, such rights may only be terminated as a result of the failure by the transferee to comply with a material term or condition of the original obligation.

New $1 coins

Title XI provides for minting new $1 coins. The new $1 coins will be golden in color and have tactile features to aid the visually handicapped to differentiate the $1 coin from other coins. The obverse side of the new $1 coin will have a design symbolizing the 500th anniversary of Christopher Columbus's exploration of the New World.

The new $1 coins must be placed into circulation not later than 18 months after enactment of this Act. Seigniorage resulting from production of the new $1 coins will be used first to offset the reverse seigniorage resulting from the destruction of Susan B. Anthony $1 coins in Government storage and next to retire the national debt.

Inflation has increased the number of transactions requiring the use of the $1 denomination. Therefore, use of the $1 paper note by consumers is increasing. This additional wear and tear on paper notes has reduced their usable life to 17 months. The United States now prints 3.2 billion $1 notes each year. In contrast, a one dollar coin could last up to 30 years. This durability, combined with a reduction on the interest payments on the deficit resulting from seigniorage from the coin, should save the Government millions of dollars per year.

At least seven other industrialized nations, including Japan, Britain, Norway, Australia, and Canada, have upgraded the durability of their $1 equivalent currency by minting coins and withdrawing the paper note. The $1 coin should aid the visually handicapped, encourage mass transit by lowering costs, and increase the efficiency of millions of daily purchases.

REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following statement regarding the regulatory impact of the bill.

Title IV improves the regulation and examination of insured depository institutions. The Federal Financial Institutions Coordination Council will establish uniform policies for the examination of banks, thrifts and their holding companies by the Federal banking agencies. The Council will coordinate regulation among the agencies to achieve uniform reporting systems and procedures. It will further ensure that a coordinated supervisory effort is made with regard to a depository institution. The agencies will coordinate their examinations and may form joint examination teams. While it is not possible to quantify the benefits of the measures that may be undertaken by the Council, there is a potential for considerable reduction of the regulatory burden.

In addition, Title V requires regulators to examine existing compliance procedures of the consumer banking statutes to determine whether current practices create an unnecessary burden on depository institutions. The bill directs the regulators to take any available steps to reduce unnecessary regulatory burdens. These measures would result in a reduced regulatory burden for institutions subject to regulation by the Federal banking agencies.

Title I provides for Treasury lines of credit to the FDIC and for the recapitalization of the Bank Insurance Fund. Title III removes certain restrictions on interstate banking and branching. One study cited by Secretary of the Treasury Brady in his testimony indicates that elimination of these restrictions could result in savings to the banking industry of $10 billion per year. Title VI makes needed improvements to coordinate the regulation of foreign bank operations in the United States. Foreign banks are already subject to licensing and examination by Federal and state regulators. Title VI further gives discretionary authority to the Treasury Department and the banking regulators to deny applications from foreign financial institutions whose home countries deny de facto national treatment to United States financial institutions. Title VII authorizes bank holding companies to acquire or establish securities affiliates within the existing bank holding company structure. Title VIII clarifies the ability of thrift institutions to convert to bank charters. Title X clarifies the liability of insured depository institutions and Federal banking and lending agencies under various environmental statutes. These provisions of Titles I, III, VI, VII, VIII and X would not increase the regulatory burden imposed by the Government.

Title II contains needed improvements to the regulatory structure applicable to insured depository institutions. Title II requires that Federal banking regulators take prompt corrective action with regard to troubled insured depository institutions. Regulators are given enhanced powers to restrict an insured depository institution's activities if its capital level declines below certain levels. To ensure that regulators have the information they need to supervise institutions effectively, Title II provides for more frequent on-site examinations of the nation's approximately 12,000 insured banks and 2,000 insured thrifts.

In addition, Title II provides for heightened management controls at insured institutions with assets over $150 million. Each insured depository institution must submit an annual report containing audited financial statements, a statement of management's responsibility for preparing financial statements, maintaining internal controls, and complying with law. Management must assess the effectiveness of the institution's internal controls and the institution's compliance with law. The institution's independent public accountant must attest to management's assertions. Each institution must also establish an independent audit committee. These increased regulatory measures are necessary to reduce the cost of bank failures and protect the deposit insurance system from losses.

Title V contains certain provisions designed to increase the protections applicable to consumers of financial services. Title V requires banks to disclose to consumers basic information on yields and fees, prescribes uniform procedures for calculating interest on accounts and prohibits certain procedures for performing that calculation. As these provisions replace many existing disclosures, the increase in the regulatory burden would be minimal. Title V also strengthens regulatory enforcement of consumer protection measures in the financial services area by requiring bank regulators to establish consumer compliance programs with trained examiners. Title V combats mortgage discrimination by requiring lenders to provide rejected mortgage applicants with a copy of any appraisal performed at the applicant's expense. As lenders currently are required to provide various documents and disclosures to loan applicants and some lenders voluntarily provide loan applicants with copies of appraisal reports, this should cause little increase in the regulatory burden. Technical amendments to the Home Mortgage Disclosure Act and Expedited Funds Availability Act fulfill the intent of previous legislation and do not increase the regulatory burden.

Title V requires insured depository institutions to provide a basic transaction account and government check cashing services for a reasonable fee. The bill does not empower regulators to issue regulations or conduct examinations with respect to these requirements. Banks may self-certify compliance with this provision. The bill does not provide for any fines, penalties or civil liabilities for violations of these provisions. As a result of these provisions, and given that many institutions are already providing comparable services, the increase in the regulatory burden would be slight.

Title VI requires that foreign banks seeking to exercise expanded securities powers establish United States bank subsidiaries if the regulators cannot otherwise determine that the foreign banks have financial resources equivalent to that required of domestic banks exercising those powers. As this applies only to foreign banks engaging in new securities activities, there is no increase in the regulatory burden for current activities.

Title IX strengthens the enforcement of current money laundering statutes by authorizing new penalties for insured depository institutions and their employees convicted of money laundering and reporting requirement offenses. Title IX further requires insured depository institutions to identify their nonbank financial institution customers and authorizes Federal penalties for violations of state laws. These measures will improve compliance with existing law with little increase in the regulatory burden.

Title XI contains a number of miscellaneous provisions. Title XI strengthens the safety and soundness of credit unions by requiring that corporate credit unions be federally insured. Title XI further requires that broker-dealers and their associates disclose membership status in the Securities Investor Protection Corporation and provide a description of SIPC coverage. These provisions will result in a minimal increase in the regulatory burden. The remaining provisions of Title XI, many of which modify existing statutory requirements, will result in no increase in the regulatory burden imposed by the Government.

COST OF THE LEGISLATION

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 30, 1991.

Hon. DONALD W. RIEGLE,
Chairman, Committee on Banking, Housing, and Urban Affairs,
U.S. Senate Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 543, the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991, as ordered reported by the Senate Committee on Banking, Housing, and Urban Affairs on August 2, 1991. Enactment of S. 543 would affect direct spending and receipts, and thus would be subject to pay-as-you-go procedures under the Balanced Budget and Emergency Deficit Control Act of 1985.

Because we have had the legislative language for only a short time, this estimate is preliminary and may be revised as we further review the bill and obtain additional information about its impact.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER,
Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 543.

2. Bill title: The comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991.

3. Bill status: As ordered reported by the Senate Committee on Banking, Housing, and Urban Affairs on August 2, 1991.

4. Bill purpose: S. 543 would make extensive changes in the deposit insurance system and in the regulation of financial institutions. These changes include procedures for prompt corrective action by regulators when institutions are undercapitalized, more frequent examinations, and restrictions on the use of the too-big-to-fail policy. The bill would also eliminate deposit insurance coverage of certain types of bank investment contracts. The bill would phase out over a period of years the current prohibitions on interstate banking and on interstate branching by state and national banks and would give banks new powers to affiliate with securities firms.

S. 543 would provide additional borrowing authority for the Bank Insurance Fund (BIF) and establish procedures to recapitalize the fund. It also includes provisions specifying how depository institutions and other entities must disclose information about yields and fees; requiring depository institutions to offer low-cost basic financial services accounts; strengthening enforcement of consumer protection measures in the financial services area and federal supervision of foreign bank operations in the United States; improving enforcement of prohibitions against money laundering; and limiting the liability of the deposit insurance agencies, insured depository institutions, and other mortgage lenders for hazardous wastes on property that they hold.

5. Estimated cost to the Federal Government: Overall, CBO believes that enactment of S. 543 could save the federal government significant amounts of money, perhaps billions of dollars, over the next decade, by reforming the deposit insurance system and the regulation of financial institutions. The consequences of the legislation are, however, quite uncertain. They depend on how the regulatory agencies would implement the authorities the bill would give them and how the banking industry would respond to the new environment the bill would create. They also depend on broad economic conditions and their effects on the banking and thrift industries. Consequently, CBO cannot estimate with any precision the budgetary impact of S. 543.

More specifically:

CBO expects that the bill's reforms of the deposit insurance system and regulatory procedures would reduce the long-term risk to the government insurance funds by reducing the likelihood of future bank and thrift failures and by lowering the cost of resolving those institutions that do fail. The impact of these changes would depend greatly on how aggressively they are implemented by the regulatory agencies. It is possible that additional outlays would be necessary in the short term in order to achieve the long-run savings.

The $70 billion in additional borrowing authority for BIF would not result in additional costs to the government, because the funding would fulfill an already-existing deposit insurance liability of the government. Furthermore, CBO expects that the borrowed funds would be repaid form bank assessments over the next several years.

The reforms mandated by S. 543 would increase the likelihood that the funds loaned to BIF would be repaid from bank assessments and that ultimately the U.S. Treasury would not bear the costs of bank failures. Since insurance losses for savings and loan failures are being covered almost entirely by Treasury funds, reductions in insurance losses on savings and loans would result in savings to the Treasury.

Additional costs to the agencies that regulate financial institutions are likely to be in the range of $130 million to $150 million annually, once new procedures are fully implemented. Most of these costs would be covered by fees charged to the regulated institutions; the remainder would be offset by reduced insurance losses.

Some provisions in the bill would affect appropriated accounts. If additional appropriations are provided for these purposes—mostly for the Securities and Exchange Commission, additional discretionary spending would amount to about $40 million a year.

Basis of Estimate:

Scoring Conventions. The Budget Enforcement Act of 1990 excludes from pay-as-you-go calculations direct spending and receipts resulting from "full funding of, and continuation of, the deposit insurance guarantee commitment in effect on the date of enactment of this section." The conference report on that act indicates that the intent of this provision is that "the funding to meet deposit insurance liabilities that meet existing commitments be exempt from any pay-as-you-go sequestration."

In applying the Budget Enforcement Act of S. 543, CBO has determined that the only provisions involving deposit insurance that should be included for pay-as-you-go purposes are those that change the existing deposit insurance guarantee commitment as defined in law. Thus, the exclusion of bank investment contracts from deposit insurance coverage would affect pay-as-you-go scoring. In contrast, all spending effects that would result from the additional BIF borrowing authority and the BIF recapitalization plan, all costs of implementing the new deposit insurance procedures mandated by the bill, and all changes in deposit insurance spending that would result form those procedures would not be counted for pay-as-you-go purposes.

Spending Effects: BIF Recapitalization. S. 543 would increase the authority of the Federal Deposit Insurance Corporation (FDIC) to borrow from the Treasury and its Federal Financing Bank (FFB) on behalf of BIF. The existing Treasury line of credit would be raised from $5 billion to $30 billion, to be used for insurance losses and administrative costs. Treasury borrowings would bear interest at market rates for comparable Treasury securities and would be scheduled for repayment within 15 years. In addition, the FDIC would be authorized to borrow up to $45 billion from the FFB for working capital, to be used to cover the cost of assets acquired from failed banks until they are sold. FFB borrowings could not exceed BIF's cash balance plus 90 percent of the estimated market value of its assets. In addition, the bill would require the FDIC to set assessments for banks in accordance with a schedule that would bring BIF's reserve ration to 1.25 percent within 15 years. Insurance losses on foreign deposits would be covered by a special assessment on foreign deposits held by member institutions.

As discussed above, the additional spending resulting from the $70 billion in new BIF borrowing authority would not be counted for pay-as-you-go scoring. Consistent with this procedure, the CBO baseline projections have assumed that BIF is provided with the necessary resources to fulfill its deposit insurance commitments. Under these assumptions, CBO has projected BIF's borrowing needs to total about $36 billion over the next few years, based on projected gross insurance losses of $42 billion over the 1991–1996 period. Assuming an increase in the BIF premium to 30 basis points by 1993, CBO projects that BIF would be able to repay the Treasury and the Federal Financing Bank in less than 10 years.

Overall Impact of Deposit Insurance Reform on BIF. The bill would make comprehensive changes in the regulation of banks and other depository institutions. Regulators would be required to take various corrective actions based on a bank's capitalization; as capital levels decline, increasingly stringent limitations would be imposed on the institution's actions. The federal banking agencies would establish the capitalization levels that would trigger each set of actions, but a ratio of tangible equity to assets of less than 2 percent of assets would necessitate appointment of a conservator or receiver or some other action that would better protect the deposit insurance system.

A variety of other reforms would also be instituted. They would include restrictions on the use of the too-big-to-fail policy, establishment of a risk-based assessment system, changes in accounting and auditing procedures, more frequent examinations, additional grounds for appointment of a conservator or receiver, limits on Federal Reserve discount window advances to undercapitalized institutions, standards for safety and soundness, standards for real estate lending, limitations on risky bank activities, safeguards against insider abuse, and additional reporting requirements.

CBO cannot project with any precision the overall impact of these provisions, because the future condition of the banking industry and the ways in which the banking regulators would implement this bill are so uncertain. We believe that the legislation would reduce long-term losses and spending by the Bank Insurance Fund—because of the requirements for prompt corrective action, the imposition of risk-based assessments, the requirement for least-cost resolutions and more frequent examinations, and other regulatory changes.

The provisions requiring prompt corrective action could be particularly significant. The results are difficult to predict, however, because the regulators would determine the points at which each set of actions is triggered. We expect that prompt corrective action could reduce losses by 10–20 percent, and possibly much more, depending on how aggressively the procedures are implemented. A reduction of 10–20 percent over the 1992–1996 period would reduce BIF losses by $2 billion to $5 billion over this period.

We also expect that BIF outlays in the near term, at least fiscal years 1992 and 1993, would increase as a result of S. 543. If prompt corrective action leads to a speed-up in bank closures, the long-term losses may be smaller but the cash outlays for both losses and working capital would occur sooner. It is also possible that the requirements for least-cost resolutions would necessitate more liquidations or deposit transfers, which require more up-front cash outlays than other forms of resolution.

Interstate Banking and Branching. The bill would significantly relax restrictions on both interstate banking and branching. One year following enactment, the bill would allow any adequately capitalized and managed bank holding company to acquire an existing bank in another state. Two years following enactment, bank holding companies would be permitted to establish subsidiary banks in another state. Three years following enactment, the bill would permit adequately capitalized and managed national banks and state-chartered banks to establish or acquire a branch located outside the state in which the main office is located (subject to approval by the appropriate regulatory agency). The bill would allow states to restrict interstate branching if, between January 1, 1990 and three years following enactment of S. 543, they enact laws that expressly prohibit all out-of-state banks from establishing or acquiring branches in that state. The bill also would allow states to permit interstate branching before the expiration of the three-year waiting period.

These provisions would result in greater competition within the banking industry, which would force inefficient banks to reduce costs on their own or be merged with an institution that would do it for them. Increased competition would likely lead to higher bank insurance fund losses in the short term, but greater efficiency and increased geographic and industry diversification of bank loans would probably lower losses in the longer term.

Pass-Through Insurance. Under current law, the federal government provides insurance coverage on deposits up to $100,000 per account. In practice, FDIC extends full insurance coverage to much larger deposits, such as those made by pension funds or money brokers on behalf of many individuals. The FDIC views these accounts as fully insured as if each pension participant or client had placed the funds individually. The bill would reduce the scope of "pass-through" insurance by eliminating coverage of certain types of pension fund deposits, known as bank investment contracts (BICs), that allow the depositor to withdraw funds without penalty. The bill would also restrict the use of brokered deposits to well-capitalized institutions.

Banks have increasingly used BICs in recent years to attract investments from pension plans. The Federal Reserve estimates that the volume of BICs outstanding at the end of 1990 was $10.4 billion. The Congressional Research Service estimates that the overall investment contract market may be growing by $20 billion per year and that banks may capture up to $15 billion of that growth. Eliminating insurance coverage of some types of BICs would tend to reduce future losses to the Bank Insurance Fund to the extent that the overall volume of insured deposits is reduced in banks that are expected to fail. However, it is unclear that this would happen to any large degree because banks would probably attempt to alter BICs to retain their coverage or increase other kinds of insured deposits. Disallowing the use of brokered deposits by undercapitalized institutions might reduce bank insurance fund losses in the event of their failure. However, they are also likely to shift to other investment vehicles in order to attract funds. CBO is unable to estimate the size of possible reduced fund losses at this time.

FDIC Administrative Costs. Enactment of S. 543 would increase the FDIC's workload in terms of supervising and regulating commercial banks. Beginning one year after enactment, the bill would require on-site annual examinations of most banks. The bill would allow state examinations to count toward this requirement in alternative years. Currently, FDIC examines roughly 60 percent of the commercial banks under its jurisdiction each year and state examinations are used for others. The bill would also require increased administrative expenses to carry out the prompt corrective actions requirements of the bill. CBO estimates these requirements will raise FDIC administrative expenses by $2 million to $3 million in fiscal year 1992 and by about $5 million a year thereafter.

Office of the Comptroller of the Currency (OCC). The bill requires the OCC to conduct comprehensive, annual, on-site examinations for safety and soundness as well as compliance with consumer-related and other laws affecting fair lending, truth-in-savings, money-laundering, community investment, and other areas. The law would require the OCC to set up a separate consumer compliance program with specially trained examiners. The OCC now examines large banks annually, but only samples approximately 16 percent of smaller banks each year, and does not have a specialized program for consumer compliance audits as required by the bill. Based on information from the OCC, we expect that once fully implemented, the agency would spend between $60 million to $70 million annually to conduct more frequent and expansive examinations. Estimated costs in 1992 are expected to range between $30 million and $35 million. These expenses would be recovered by raising assessments to banks, resulting in no net budgetary impact.

Resolution Trust Corporation (RTC). Consistent with the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), the Office of Thrift Supervision (OTS) has broad authority to place thrifts that are undercapitalized in conservatorships. Title II, which outlines rules that OTS must follow in taking prompt action to close thrifts, references FIRREA and provides additional guidelines. As a result of these changes, we expect that OTS would review capital restoration plans within a shorter time period, and would initially move 85 thrifts into conservatorship more quickly than currently planned. Over the long term, OTS may be taking supervisory action against more thrifts than it otherwise would have.

Once a thrift is placed in conservatorship, the RTC prepares the thrift for sale or liquidation. The assumptions underlying the CBO baseline already anticipate the RTC will be closing failed thrifts at a pace consistent with the resources available to the agency. As a result, we would not expect that RTC would be closing institutions much earlier than we had already assumed. While CBO has not yet finished its review of the losses associated with thrifts in conservatorship, we believe that thrifts allowed to operate when their capital level is weak continue to accrue losses by selling good assets at bargain prices, securing high cost funds, or making new risky loans. By placing thrifts in conservatorship earlier, we expect that the rate of deterioration in a thrift's net worth will slow during the time it remains open until it can be closed. If, for example, the annual rate of growth in losses in institutions that currently have tangible capital in excess of 1.5 percent and that CBO expects will need to be closed or merged in the next four years were to decline from 30 percent to 25 percent pending resolution, RTC could save in the range of $5 billion t $10 billion in insurance costs relative to the CBO baseline over the 1992–1996 period.

Office of Thrift Supervision. Information from OTS indicates that the agency currently conducts annual on-site, full scope examinations at most institutions, and plans to expand the examinations that it now conducts on a limited, risk-focused basis to full-scale exams. Thus, OTS would be complying with the provisions of S. 543 requiring annual examinations for safety and soundness in any case. On the other hand, we expect OTS will need to examine thrifts annually, rather than biannually, as it now does, for compliance with consumer laws. The cost of these examinations, estimated to be $3 million in 1992 and $7 million annually in 1993 and beyond, would be recovered from fees charged to thrifts, resulting in no net budgetary impact.

Lender Liability. The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) holds responsible parties liable for the cost of cleaning up hazardous wastes. Government agencies or financial institutions that acquire property may become liable for environmental pollution on these properties. The FDIC and the RTC hold in receivership tens of thousands of assets that they acquired from failed thrifts and banks. Even though the size and value of the assets that they control that involve hazardous substances are small, the agencies are concerned about potential clean-up costs.

Title X of this bill would limit the liability and thus the potential costs of depository institutions, mortgage lenders, and federal deposit insurance and lending agencies under federal, state and local hazardous waste laws. In general, these entities would be immune from liability under these laws unless they directly cause or contribute to the release of hazardous substances. The limitations would apply to property acquired through foreclosure or other means, and would extend to the next subsequent purchaser of such properties, as long as the purchaser is not otherwise liable for the pollution. The federal banking and lending agencies that would receive limited immunity from liability under hazardous waste laws include the FDIC, RTC, OCC, OTS, National Credit Union Administration (NCUA), Federal Reserve, Rural Electrification Administration, Farmers Home Administration, Farm Credit Administration, and the Small Business Administration.

CERCLA provides some exceptions to liability, including the "innocent purchaser", "innocent landowner", and secured creditor exemptions. Recent court decisions have created some confusion about these exemptions. Among other things, Title X of S. 543 would codify a proposed rule by the Environmental Protection Agency (EPA) that addresses these issues. Given the relatively limited experience to date with contaminated properties, and the uncertainty as to the costs under current law and practices, it is difficult to assess the potential savings to the federal agencies, particularly the RTC and the FDIC, as a result of enactment of this legislation. They may avoid some clean-up costs, and by extending immunity to the purchaser of assets sold by these agencies, the bill may enable them to market these properties more quickly and at a higher price. We are unable at this time to quantify these savings, if any.

Title X would also limit potential future liabilities of insured financial institutions for hazardous waste costs. To date, no banks or thrifts have failed as a result of liability for hazardous wastes. We expect that this provision would not significantly affect the number of future bank or thrift failures.

Whenever possible, EPA attempts to recover money from parties responsible for creating a toxic site. We do not expect that the liability limitations in Title X would affect recoveries from hazardous waste clean-ups in the short term because the lag between EPA taking action against a potentially responsible party and ultimately recovering money is 5 years or more, and EPA currently has no outstanding actions against banks or federal agencies. In the long run, if recoveries under CERCLA are less than they would have been without these liability limitations, or the damage to the environment grows because clean-up is delayed, the ultimate cost to EPA's Superfund will increase.

Treasury Loan Guarantee for Rhode Island Credit Union Failures. The bill would authorize the Secretary of Treasury to guarantee repayment of up to $180 million in borrowing by the Depositors Economic Protection Corporation (DEPCO). The State of Rhode

Island established DEPCO to borrow money to repay depositors of failed credit unions that lacked federal deposit insurance coverage.

Section 1137 specifies a number of conditions that must be met before Treasury may issue its guarantee. DEPCO must borrow the funds within one year, and the borrowing must mature within 10 years. Repayments of interest only must be scheduled the first 5 years; in years six through ten, the principal must be repaid in equal annual installments. The borrowing would be secured with assets from closed credit unions. The bill would require that the appraised value of the collateral equal at least two and one-half times the value of the amount borrowed. The borrowing must also be secured by revenue from a Rhode Island sales tax dedicated to DEPCO, and not otherwise pledged to repay other securities.

The Treasury would be required to collect a guarantee fee of one-half of one percent per year on the outstanding principal amount of any borrowing that has been guaranteed. The agency would be prohibited from issuing a guarantee unless a nationally recognized rating agency rates the issues with the highest investment grade, and unless the Office of Management and Budget (OMB) determines that the guarantee has no net cost to the federal government. Assuming that all these conditions are met, the Treasury could issue a guarantee without further Congressional action.

Under the Credit Reform Act of 1990, the federal budget records budget authority equal to the subsidy cost of federal loans and guarantees in the fiscal year in which the government commits to provide the assistance, and outlays in the years in which the assistance is provided. To estimate subsidy cost, OMB and CBO calculate the net present value of expected late payments, default losses and interest subsidies, net of fees the borrowers pay to the federal government. CBO estimates that the guarantee of debt issued by DEPCO would have no subsidy cost. This conclusion reflects the bill's requirements that the securities receive a triple A rating without the guarantee, that DEPCO pay an annual guarantee fee of 0.5 percent of outstanding principal, and that a sinking fund is dedicated to maintaining reserves for future payments. Thus, for purposes of pay-as-you-go scoring, we expect the cost to be zero.

Securities and Exchange Commission (SEC). S. 543 would require the SEC to regulate the securities activities of financial services institutions. Based on information provided by the SEC, we expect that promulgating and enforcing the various rules required by the bill would cost the federal government between $5 million and $7 million annually. In addition, the bill would permit the SEC to fix compensation for SEC employees without regard to Title V, United States Code, which governs the pay levels for most federal employees. Removing the pay cap for SEC personnel would cost between $25 million and $28 million annually (somewhat less in 1992), assuming appropriations of the necessary amounts. The President's budget request for 1992 includes $225.8 million for the SEC, and does not anticipate removal of the pay cap.

National Credit Union Administration. Title XI would make changes in the regulation and insurance that the NCUA provides to credit unions. If the equity of the NCUA falls below 1.2 percent of insured shares, the NCUA must assess a premium sufficient to restore the fund balance to the 1.2 percent level, but not exceeding one-twelth of one-percent of deposits unless the NCUA Board of Directors votes unanimously to exceed this amount. Including a recent assessment, the fund's capital is now 1.29 percent of insured shares. This provision is not expected to raise premiums unless losses are substantially greater than currently anticipated.

To meet the requirement for examinations, particularly in the area of consumer compliance, we estimate that NCUA may spend up to $3 million annually for training, additional examiners, travel and overhead. The NCUA would charge credit unions for these expenses, resulting in no net budgetary impact.

S. 543 would limit loans to one borrower; require corporate credit unions to secure federal deposit insurance; allow the NCUA to close insolvent state-chartered credit unions under certain circumstances; and set a goal for credit unions to maintain reserves of seven percent of total outstanding loans and risk assets. These provisions would reduce the risk of future losses to the insurance fund, though we cannot quantify such potential savings.

The bill would reduce the lending authority of the Central Liquidity Facility (CLF), which provides short-term liquidity for credit unions, from 12 to 2 times its capital. This provision would cap the authority of the CLF to lend at about $900 million, which is a substantially higher level than the agency has historically used; therefore, this reduction in obligational authority is not expected to have any effect on the agency's ability to meet loan demand.

Authorizations of Appropriations. S. 543 specifically authorizes the following appropriations: $3 million to fund a Presidential Commission on Insurance; $1 million to the Secretary of Treasury to provide training to foreign governments seeking to develop their capabilities for investigating and prosecuting violations of money laundering laws; and such sums as may be necessary to establish a Congressional Commission on Core Banking. Assuming appropriations of the necessary amounts, we estimate that outlays would total about $2 million in 1992 and $2 million to $3 million in 1993.

Dollar Coin. Section 1136 would authorize the U.S. Mint to issue a dollar coin that is gold in color and that commemorates Christopher Columbus's discovery of the New World. Currently, the Mint must store 408 million Susan B. Anthony one dollar coins because the public has not been willing to use the coin. The Director of the Mint has publicly stated "that for a dollar coin to succeed, production of dollar notes must be eliminated." (Testimony before the Subcommittee on Consumer Affairs and Coinage of the House Committee on Banking, Finance and Urban Affairs, April 23, 1991.) This conclusion is bsaed on the Mint's experience with the Susan B. Anthony coin, as well as the observation that all foreign countries that have successfully introduced a high denomination coin have replaced the note with the coin.

Based on information from the Mint, CBO expects that if S. 543 were enacted, the Mint would not anticipate strong public demand for a one dollar coin because the bill would not eliminate the one dollar note. As a result, the Mint would issue only a small number of coins. Thus, CBO does not expect that the Mint would incur significant costs to implement the bill, or that the effect on seignorage or federal borrowing costs would be significant.

Miscellaneous Provisions. S. 543 would require several agencies to prepare a number of reports and regulations, and undertake other new responsibilities. The agencies have not yet been able to provide CBO with enough information on which to base a detailed estimate, but it appears that the cost of these provisions may total $10 million or more annually over the next few years. The funds would largely be subject to appropriation actions or be reimbursed from the public. Those agencies most affected include the Treasury, General Accounting Office, Department of Justice, Federal Trade Commission, and the Department of Housing and Urban Development.

Revenue effects: Federal Reserve. S. 543 is expected to reduce revenues by increasing the supervisory costs of the Federal Reserve System. Each year the Federal Reserve remits its surplus to the Treasury, with the payment recorded in the budget as governmental receipts, or revenue. Therefore, the additional operating costs resulting from enactment of the bill would reduce revenues. Based on analysis provided by the staff of the Federal Reserve Board, we estimate that the Federal Reserve would incur additional unreimbursed costs of $16 million in 1992 and $121 million cumulatively from 1992 through 1996.

Under Title II of the bill, the Federal Reserve would be given specific responsibilities to take "prompt corrective action" to resolve the problems of troubled banks under its supervision. The Federal Reserve is the chief supervisor of member banks that are state chartered. If the Federal Reserve determines that one of these institutions has become "undercapitalized" as defined in the bill, the institution must submit a plan to the Federal Reserve to restore its capital. The Federal Reserve must then closely monitor the bank's progress under the plan. If the institution becomes classified as "significantly undercapitalized" or fails to implement its plan, then the Federal Reserve must take further steps to restrict the institution's activities. If the institution becomes "critically undercapitalized," then the Federal Reserve must appoint a receiver or conservator within 30 days, with consent of the FDIC. The additional costs from these provisions are expected to be the most significant costs the Federal Reserve faces from this bill.

The Federal Reserve would also have to increase its supervisory activities as a result of the interstate banking and branching provisions in Title III of the bill. The Federal Reserve would have to closely monitor the activities of interstate banks and branches in order to ensure that proper supervision is maintained. In addition, the Federal Reserve expects many applications from banks and bank holding companies to establish new branches and banks in different states.

Other responsibilities given to the Federal Reserve would result in much smaller increases in costs. The Federal Reserve would be required by Title VII of the bill to examine the newly-sanctioned relationship between the securities affiliate, the bank holding company, and the bank affiliate to ensure that the required degree of separation is maintained. In addition, the Federal Reserve would be given added responsibilities under the consumer-related provisions of the bill.

Title VI would provide the Federal Reserve with significant new authority in the area of foreign bank supervision. The Federal Reserve is given the authority to directly examine all branches of foreign banks located within the United States, an expansion of its authority under present law to examine only indirectly the foreign branches by using the reports of the Comptroller of the Currency, the FDIC, and the state regulators where possible. In addition, the Federal Reserve would examine foreign branches for compliance with consumer protection laws. The Federal Reserve estimates the additional costs related to foreign banks would total between $25 million and $30 million dollars in 1996, about equal to the additional costs from all the other provisions of the bill combined. Nevertheless, the Federal Reserve is required to charge the foreign banks for the added costs associated with the examinations. We assume the added costs would be completely reimbursed by the foreign banks and the net cost to the Federal Reserve of the new foreign supervisory authority is, therefore, estimated to be zero.

Title II would place limitations on the Federal Reserve's long-term lending to troubled banks through the discount window, but the estimated budgetary effect of these limitations is zero. Under certain circumstances specified in the bill, the Federal Reserve would not be reimbursed by the deposit insurer for discount window loans at banks that became insolvent. Based on conversations with staff at the Federal Reserve Board, we expect that the budget of the Federal Reserve would be unaffected by these limitations because the Federal Reserve would not extend long-term credit to banks under these circumstances.

Securities and Exchange Commission. The bill would increase revenues from the registration of securities with the SEC, but the net revenue increase is estimated to be less than $500,000 per year. The bill requires banks and savings and loans to register their public securities offerings with the SEC, which charges a fee for this service. The proceeds of the fee are classified as other miscellaneous receipts in the budget.

Other Revenue Effects. The bill may affect federal revenues in addition to the effect on the Federal Reserve and the SEC. The Congressional Budget Office does not estimate these effects. The Joint Committee on Taxation, which does provide revenue estimates, has not completed a revenue analysis of the bill.

6. Pay-as-you-go considerations: The Budget Enforcement Act of 1990 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1995. As discussed earlier, CBO believes that provisions in the bill affecting deposit insurance costs, including administrative expenses, should not be included for pay-as-you-go purposes unless the existing deposit insurance guarantee commitment as defined in law is changed. The elimination of insurance coverage for certain types of bank investment contracts would be such a change. This change would probably result in a savings to the Bank Insurance Fund, but we do not have sufficient information to estimate the amount.

The other pay-as-you-go effects are not significant. Additional SEC fees would be recorded as receipts, but would amount to less than $500,000 a year. The $180 million loan guarantee for Rhode

Island's DEPCO is estimated to have no subsidy cost, and therefore estimated outlays would be zero.

It is possible that there are other revenue effects of the bill unrelated to deposit insurance. The Joint Committee on Taxation provides such revenue estimates, but has not completed its analysis of the bill.

7. Estimated cost to State and local governments: S. 543 would make changes to current law, particularly in the area of interstate banking and interstate branching, that might affect the system that states currently use to assess corporate income taxes. If that is the case, it is possible that some banks headquartered in states with lower state tax rates may pay, in aggregate, lower state income taxes than they now are required to pay. As a result, some states may lose income tax revenues.

8. Estimate comparison: None.

9. Previous CBO estimate: None.

10. Estimate prepared by: Robert Sunshine, Mary Maginniss, Andrew Morton, James Hearn, John Webb (226-2860), and Mark Booth (226-2689).

11. Estimate approved by: C.G. Nuckols for James L. Blum, Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

In the opinion of the Committee, it is necessary to dispense with the requirements of section 12 of Rule XXVI of the Standing Rules of the Senate in order to expedite the business of the Senate.

ADDITIONAL VIEWS OF SENATORS SARBANES, SASSER, WIRTH, KERRY, AND BRYAN

We opposed this legislation in significant measure because of the severe weakening of the safety and soundness restrictions on financial relations between a commercial bank and its securities affiliate that took place between the initial release of the Chairman's discussion draft of the legislation on July 3 and the Committee markup on July 31-August 2. In particular, we opposed several provisions of the second degree managers amendment offered by Sen. Garn which severely weakened the safety and soundness protections contained in the Chairman's draft. This weakening of the so-called "firewall" restrictions, in our view, fundamentally threatens the safety and soundness of our financial system. At a time when our financial system is in such fragile condition that the Administration has requested Congress to appropriate $70 billion of taxpayer funds to be made available for losses and working capital for the Bank Insurance Fund because of commercial bank failures, and $80 billion of taxpayer funds only for losses for the Resolution Trust Corporation because of savings and loan failures, severe weakening of bank regulation is particularly troubling.

The controversial nature of the changes made to the legislation in the Committee markup is reflected in the narrow 12-9 vote by which the Committee reported out the bill, and the 10-11 margin by which an amendment by Sen. Bryan to strengthen the firewall provisions was defeated. These narrow votes were in striking contrast to the broad support given the Proxmire Financial Modernization Act of 1988, which was adopted by the Banking Committee by an 18-2 vote and subsequently passed by the Senate by a 94-2 vote but was never acted on by the House.

That consensus legislation, like this bill, also repealed the Glass-Steagall Act, which restricts commercial bank affiliations with securities firms, but contained stringent firewall restrictions on financial relations between a commercial bank and an affiliated securities firm to protect the deposit insurance fund from risk. This bill departed from that consensus approach. It is worth noting that in 1988 no requests were being made by the Administration for massive infusions of taxpayer funds into the deposit insurance system. Yet, despite the evidence of a far more vulnerable financial system in 1991, the bill reported out by the Committee weakened the regulatory protections which enjoyed broad support in 1988.

On July 3, the Chairman of the Banking Committee, Sen. Riegle, circulated a discussion draft of legislation for the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991. The discussion draft proposed to recapitalize the Bank Insurance Fund, as requested by the Administration, and also contained a series of other structural changes in the banking system. Among the proposed changes was repeal of the Glass-Steagall Act, which since 1933 has restricted affilations between commercial banks and securities firms.

The approach of the discussion draft to repeal of the Glass-Steagall Act was very similar to the Proxmire Financial Modernization Act of 1988. It specifically adopted the stringent set of firewall restrictions on financial and management relations between the bank and the securities affiliate to prevent unsound credit judgments and insider dealing that were contained in the 1988 bill. Except for extensions of credit to clear U.S. government securities, direct extension of loans and guarantees from the bank affiliate to the securities affiliate were flatly prohibited.

Between the initial circulation of the discussion draft on July 3 and the Committee markup on July 31, however, an erosion of the firewall restrictions took place. The erosion culminated in a second degree manager's amendment by Sen. Garn in the markup giving the Federal Reserve Board discretion to permit a well-capitalized commercial bank to extend credit directly to a securities affiliate up to 5% of the capital of the bank, as well as to issue guarantees for securities being underwritten by a securities affiliate which can aggregate up to 40% of the institution's capital.

In our view this erosion of the firewall restrictions represents a fundamental threat to the safety and soundness of our commercial banking system. To understand why, it is instructive to refer back to the Banking Committee report which accompanied the 1988 bill. The report explained in straightforward terms the reasons for the strict firewall restrictions, in particular credit-related restrictions, on securities affiliates and affiliated banks:

> First, it is imperative to promote impartial credit decisions by the bank. One would not want bank credit decisions to be affected by concern for the reputation of the securities affiliate or concern for the success or failure of a particular securities affiliate activity. Second, a securities firm affiliated with a bank should not have an unfair funding cost advantage because of the existence of deposit insurance for creditors of the bank. Third, the decisionmakers in charge of the securities affiliate should be clearly aware that in the event of a loss the securities affiliate will not come under the umbrella of insurance protection. This is an important consideration both because it is important not to extend the deposit insurance fund to cover activities it was not intended to cover, and because the securities affiliate would have an incentive to engage in excessive risk taking out of the belief that any losses would be insured.

As a result of these considerations, the 1988 bill contained a list of explicit "firewall" provisions, including a flat prohibition on a bank affiliated with a securities affiliate extending credit in any manner to the securities affiliate (except for an extension of credit that is made in the course of clearing U.S. Government or agency securities), or issuing a guarantee, acceptance, or letter of credit for the benefit of the securities affiliate.

The original discussion draft proposed by Chairman Riegle on July 3 adopted the same firewall restrictions as the 1988 bill. It was the fundamental weakening of these restrictions in the markup of the legislation that contributed to a sharp division in the Committee. The rationale for repeal of the Glass-Steagall Act is to permit commercial banks to follow their corporate customers into the securities markets, where their customers are not able to raise capital directly rather than borrow from a commercial bank. It is not clear, however, why it is necessary for a well-capitalized securities affiliate to have to turn to its affiliated commercial bank for credit. If the securities affiliate is economically sound, it should have no difficulty obtaining credit from unaffiliated commercial banks.

There is no compelling public interest served by permitting the securities affiliate to turn to its affiliated commercial bank for credit. There are, however, compelling public policy reasons for such financial relations to be prohibited. The potential for preferential treatment in such relations is great, leading both to unfair market competition and biased credit judgments posing potential risks to the deposit insurance fund. Invariably a bank will be more inclined to lend to a securities affiliate with which it has an entrepreneurial stake and relationship than it would to an unaffiliated securities firm. Consequently a federally insured bank would be unnecessarily and improperly exposed for credit risk in the equities market.

The problems that led to the enactment of the Glass-Steagall Act have not been removed from the real world today. The public interest would best be served by the firewall restrictions contained in the Proxmire bill and the Chairman's original discussion draft of legislation. A simple, unequivocal prohibition on the extension of credit or guarantees from a commercial bank to its securities affiliate would best protect against possible insider trading or biased credit decisions. This was the consensus judgment of the Senate Banking Committee and the full Senate in 1988. This was the judgment of the chairman of the Banking Committee when he circulated his initial discussion draft.

It is difficult to understand why Congress should adopt less restrictive safety and soundness restrictions on financial relations between a commercial bank and its securities affiliate in 1991 than in 1988. Since 1989, $80 billion in taxpayer funds has been spent cleaning up losses in insolvent savings and loans. Today the Administration is requesting an appropriation of $80 billion for additional losses for the Resolution Trust Corporation. Moreover, the Administration is asking for an appropriation of $70 billion to be spent on an as needed basis for the Bank Insurance Fund because of commercial bank failures. This amounts to $230 billion more in taxpayer appropriated funds than were spent in 1988 when the financial system did not appear as fragile as today.

Expanding the securities powers of banks without appropriate safeguards could threaten the safety and soundness of our already weak financial system. If this legislation is enacted in its current form we believe that it will result in increased exposure of risk to the deposit insurance system. The Congress has a unique opportunity to reshape and restructure our financial system to restore it to a position of strength and dominance in the world markets. But we cannot do so as the expense of the safety and soundness of the financial system and ultimately the American taxpayer. In our zeal to authorize new activities for banks, we cannot place taxpayer funds at further risk. Without strong firewalls, that goal cannot be achieved. Therefore, we must oppose this legislation on the grounds that it does not meet the basic public policy objectives necessary to provide adequate protections to preserve the integrity of the financial system and protect the American taxpayer.

Paul S. Sarbanes.
Jim Sasser.
Timothy E. Wirth.
John F. Kerry.
Richard H. Bryan.

ADDITIONAL VIEWS OF SENATORS DODD, SANFORD, SHELBY, GARN, D'AMATO, AND CHAFEE

The Committee appropriately considered deposit insurance reform in conjunction with the capitalization of the bank insurance fund. Among other things, new capital guidelines are set forth for insured depository institutions and specific actions are required or may be employed by the regulatory agencies when such institutions fall below prescribed capital levels. These early intervention steps are intended to protect the deposit insurance fund and eliminate, to the maximum extent possible, any future costs to the taxpayer.

At the same time, the Committee must be concerned with actions which serve to attract capital investment and, equally important, with steps which would dissuade investment in or loans to depository institutions, their holding companies and their subsidiaries. We are concerned that the cross guarantee and capital maintenance provisions included in sections 205 and 223 of this bill, as amended during mark-up, do not strike the proper balance between making holding companies accountable for the solvency of their insured depository subsidiaries and encouraging capital investment to strengthen holding companies. Although, in our opinion, the bill is an improvement over language contained in the original Committee Print, we believe several additional issues remain to be addressed.

The intent of cross-guarantee and capital maintenance provisions is to protect the deposit insurance fund from loss. Extending such guarantees to non-depository affiliates, however, could dramatically disrupt their capital formation and funding to the detriment of the holding company, its insured depository institution affiliates, and ultimately the deposit insurance fund. The Managers Amendment to the Committee Print appropriately struck the extension of the cross-guarantee liability to the non-depository affiliates of a failed institution and clarified that such liability was not to be construed as a capital maintenance commitment under the Bankruptcy Code. An additional amendment by Senator Chafee clarified that a capital restoration plan had to be guaranteed by a controlling company, and the liability associated with such guarantee, if any, be limited to 5% of the assets of the undercapitalized institution. These were positive actions taken by the Committee in recognition that investors in, and lenders to, non-depository affiliates would only be willing to retain and expand such capital investments and loans, thus strengthening the holding company, if they were assured their interests would not be compromised by cross-guarantee and capital maintenance liability.

The actions taken by the Committee during mark-up concerning cross-guarantee and capital maintenance liability were good for investors, lenders and the deposit insurance fund. However, other issues must still be addressed in this area in order to insure that we are not unduly hampering the flow of capital to our insured institutions, their subsidiaries and holding companies. For example, unless we limit the liability of unaffiliated third party investors, such parties will not be willing to risk their capital in a bank subsidiary investment. This and other concerns must be addressed when the full Senate considers S. 543. It is necessary that investors and lenders alike view depository institution holding companies, their depository and non-depository affiliates and depository institution subsidiaries in a positive light, thus enhancing the financial stability of an industry which is vitally important to our country. The ultimate benefit will inure to the deposit insurance fund.

CHRISTOPHER J. DODD.
TERRY SANFORD.
RICHARD SHELBY.
JAKE GARN.
ALFONSE D'AMATO.
JOHN H. CHAFEE.

ADDITIONAL VIEWS OF SENATOR KERRY

I am grateful for the serious and sustained work of the Chairman of the Banking Committee, the Ranking Member, and their excellent staff in crafting this comprehensive bank reform bill. But the final product diverges in important ways from steps I believe are essential to modernize banking law equitably and safely.

On the positive side, the bill moves us into a world of essentially unrestricted interstate banking and branching, with a three year transition period. It also for the first time permits the systematic creation of non-bank affiliates for banks to use to enter the world of selling securities and insurance under a holding company system that is intended to shield federally-insured deposits from risky activities.

It also moves some distance to level the playing field between domestic and international banks, by requiring foreign banks to establish separately capitalized affiliates should they desire to engage in the broader powers now granted to U.S. banks with such affiliates.

The bill sets up a means of recapitalizing the Banking Insurance Fund through borrowing from the Treasury—$70 billion in all—and a 15 year time-table for repayment of that loan by the banks.

While that is all to the good, I retain a series of concerns:

The report language summary states that the plan contained in this legislation "sets forth a concrete program for rebuilding the Bank Insurance Fund so that America's taxpayers will not have to pay for the bank failures that are expected to occur in the early 1990's." Regrettably, I remain unconvinced that this statement will prove to be true. I continue to fear a bank bailout like the S&L bailout, should economic conditions continue to deteriorate in real estate and other afflicted areas.

As Charles Bowsher, the Comptroller General, and a Reagan Presidential appointee, stated recently regarding the most recent installment of the savings and loan bailout, "What the Administration is asking for is enough working capital and loss funds to get through the election and into 1993. It is not at all clear that it will be enough."

I fear that Mr. Bowsher's comments may also prove to be applicable to the BIF, and that what is today characterized as "borrowing" from the Treasury for the BIF may be tomorrow become yet another taxpayer bailout.

I also have continuing concerns about the general concept of borrowing from the Treasury to bail out the banks. The BIF was supposed to be self-financing. Assessments on banks for the BIF have already doubled this year. Yet by July 31, 1991, Comptroller General Bowsher wrote the Committee to state that "without recapitalization the Fund will be billions of dollars in the red by the end of the year."

It is evident that the nation's banks are not strong enough today to finance the costs of bank failures, and I fear they may not be in the future. Accordingly, I believe we should be considering methods which rely on a broader base within the financial community to help us pay for the costs of our past mistakes. I therefore have proposed, as one possible alternative to the BIF borrowing, moving to a "pay-as-you-go" system for both the BIF and the costs of S&L resolutions, funded through a fee on electronic payments transactions, to be imposed by the Treasury.

That approach would insure that all users of the dollar, domestic and foreign, pay a fair share for the costs of the bailouts, rather than forcing the American public to swallow the entire bill.

The alternative is the approach taken by the Committee: to borrow the necessary funds and ask the banks to pay it all off. That alternative could be impossible. Already, the Committee agreed to stretch out the repayment schedule to 15 years, because of concerns about the impact on the banks of the larger contributions that would be required for any shorter pay-back.

Even with the 15-year repayment period, if economic conditions continue to be poor, healthy banks could be forced to subsidize unhealthy banks until they, too, have problems, especially should assessments reach more than 35 or 40 basis points.

Another area concern I have is the fire-wall issue. Glass-Steagall was passed specifically in order to insure that banks would not be engaging in improper "tying" of services for customers, engaging in cross-subsidies, and engaging in other abuses at times of stress. In order to strengthen our national banks, we agreed to repeal Glass-Steagall. But in return, many of us wanted very tight protections to make certain that it is impossible for a bank affiliate selling insurance or securities to dip into insured funds directly or indirectly. In the final Committee bill, those protections were relaxed to a considerable degree, with a substantial portion of insured-bank capital available for loans or other financial activities involving affiliates. I fear that at the very times when we will most be relying on the fire-walls to protect the deposit insurance system, they may prove too weak to withstand the heat.

While I agree with many of the reforms enacted in Title II of the bill to protect the deposit insurance system, I do not believe reasonable the limitations which it sets on the ability of state-chartered banks to invest in stock equities, capped at an appropriate level of assets, in states where such powers have been used to date without abuse.

As a practical matter, equity investments by state banks have proven to be one of the most profitable activities for such banks in Massachusetts and other New England states, and have allowed them to diversity their overall holdings and thus reduce risk to federally insured deposits.

The statistical information provided by Committee staff, suggesting that some state powers have been abused, in no way demonstrated that stock equity investments have contributed to the problems we have had with the BIF. To the contrary, the statistical data has demonstrated that such investments have generally been quite profitable for banks.

Moreover, the new general requirement that a State bank may engage in an activity not permissible for a national bank only if the State bank is adequately capitalized and the FDIC concludes that the activity poses no significant risk to the insurance fund and is an appropriate use of insured deposits, would seem to provide rather substantial protection for the BIF absent any special limitation on equity investments by state banks. Obviously, such a provision places the FDIC in the position of being able to prevent such investments at any time if it concludes that a particular bank's decision to make such investments creates significant risks of loss.

I appreciate the Committee's decision to permit state banks, subject to the adequately capitalized standard, to continue to invest in stock indices for seven years following passage. However, I hope that the Senate as a whole will reconsider the issue to permit continued equity investments as a general matter for state chartered banks.

JOHN F. KERRY.

ADDITIONAL VIEWS OF SENATORS DODD AND SANFORD REGARDING SECTION 221, EARLY RESOLUTION

These views have been filed to give additional information about the Sanford-Dodd Sense of the Senate Resolution on assisted early resolution, adopted as Section 221 of this bill. Because we believe this resolution is a critical part of a new approach to bank failures, we believe it merits some additional discussion.

The intent behind the resolution is very clear: it is to strongly encourage the FDIC and the Office of Thrift Supervision (OTS) to make use of the authority given to them under Section 13(c) of the Federal Deposit Insurance Act to make direct equity investments in or take other steps necessary to address the problems of troubled, but viable insured depository institutions. The intent of this provision is to encourage regulators to prudently assist troubled banks in order to stave off massive numbers of bank failures, and to produce the least possible long-term cost to the Bank Insurance Fund and the Savings Association Insurance Fund.

The U.S. banking system is experiencing a serious credit crunch which is squeezing both borrowers and banks alike. It is our belief that there is too little capital spread too thinly throughout the financial system. Without new or restructured loans, many recession-slowed businesses cannot meet their present debt obligations. As more loans move into the problem category, more banks fall short of capital requirements. They cannot make new loans, businesses cannot make existing payments, banks cannot afford to pay high dividends to attract capital, and a difficult spiral continues in which more and more banks are pushed toward insolvency. The effect on many local regional enonomies—starting in New England and spreading to other parts of the nation—has been devasting.

It may be that the economy will come back quickly and few occasions for assistance will arise. However, before the situation worsens, some careful steps now to assist troubled but viable institutions—some timely prevention—could enable banks to safely lend and ultimately serve as a catalyst to recovery. The goal is a reversal of present trends—with stronger economies, fewer bank failures, and relief of the pressures on the Federal deposit insurance funds.

It is vital that the FDIC and the OTS use their authority to assist marginally capitalized banks that are viable to become healthy by providing capital, conditioned upon private capital, or sounder management, or upon mergers and consolidations.

The FDIC and the OTS have had this authority for some time. However, they have been reluctant to use their open assistance programs for fear of disapproval from Congress in light of the negative repercussions from the days of "forbearance" during the mid to late 1980s in the thrift system. We would like to distinguish the notions underlying our resolution from those connected with thrift forbearance.

First, our resolution contemplates the investment of equity capital—real money—both by the FDIC and by private investors. It in no way encourages or promotes the use of paper assets, such as supervisory goodwill, net worth certificates or deferred loan losses that were commonly used by the Federal Home Loan Bank Board and thrifts in the mid 1980s. However, there have been several examples of the successful use of open bank assistance, including, for example, an effort with respect to New York savings banks.

The Sense of the Senate provision builds upon these successes and calls for a careful strategy of appropriate open bank assistance. The provision conditions any initiatives to facilitate an early resolution upon:

a lower expected cost to the insurance fund;

substantial investments of private capital, either by investors purchasing new stock or a healthy institution purchasing the assisted institution;

potential consolidations (while we believe that more open bank assistance would foster consolidations which would lead to a healthier industry, consolidation is not a requirement);

substantial concessions by pre-existing stockholders and debtholders.

an examination of the qualifications of the board of directors and senior management of the "assisted" institution to ensure that they are qualified, and include no one substantially responsible for the institution's current condition;

a prohibition the Corporation acquiring a significant proportion of the assisted institution's assets;

new capital providers sharing the risk with the Corporation; any loss suffered by the Corporation will result in the pre-existing stockholders and debtholders losing their remaining investment; and

assistance limited in term and amount.

As such, we believe this provision can go a long way toward encouraging the regulators to think more creatively about ways to assist troubled institutions before they become failed institutions. We urge our regulators to take advantage of these provisions for the benefit of the financial system and the FDIC's funds.

Christopher J. Dodd.
Terry Sanford.

ADDITIONAL VIEWS OF SENATOR GARN ON INSURANCE PROVISIONS AND TITLE V

Along with providing needed funding for the Bank Insurance Fund, the objectives of this legislation should be to strengthen our nation's commercial banks and to enhance their ability to compete in the financial services industry. Otherwise, it will be only a matter of time before another recapitalization of the BIF will be needed and, next time, the taxpayer may have to pick up the tab. Both the insurance provisions and Title V of the bill reported by the Banking Committee undermine the appropriate overall objectives of the legislation, and both should be deleted.

INSURANCE PROVISIONS

The insurance provisions are diametrically opposite from the securities provisions: whereas the securities provisions are pro-competitive, the insurance provisions seek to restrain completion by restricting banks' ability to compete. As reported, the bill will overturn actions taken by bank regulators and State legislatures to enable banks to enter the insurance business. Attempts to overturn actions by State legislatures are particularly troublesome, given the fact that the State legislatures were presumably acting to reflect the wishes of their constituents. If consumers of insurance products express through State legislatures a desire for more competition in the insurance industry and/or a desire for the convenience of one-stop shopping for financial services, why should the Federal Government say no?

The insurance provisions also are troubling because they reflect a double standard. The insurance industry wants to be State-regulated in all respects save one. When it comes to protection from competition, the insurance industry wants the Federal Government to become involved and protected insurance agents and underwriters from competition from banks.

With respect to insurance agency activities, the bill seemingly embraces State laws by adopting a rule that would permit national banks to sell insurance throughout a state to the same extent permitted by a State-chartered bank located in that State. Yet, the same bill that delegates power to the States to determine the appropriate scope of insurance sales activities for all banks, at the same time, preempts all State laws governing the appropriate scope of bank underwriting activities. As a result, State-chartered banks are permitted to underwrite insurance only to the extent permitted for national banks under Federal law.

These policies are not only inconsistent, but also unworkable. For example, under the bill a national bank can continue to underwrite credit-related insurance as permitted under Federal law. Yet, the Committee report suggests that a national bank can sell insurance "only to the extent" permitted by State law. Consequently, a national bank that underwrites insurance permitted under Federal law can be prevented under State law from selling it.

Finally, the insurance provisions in the Committee's bill are troubling because of their discriminatory nature. Under these provisions, discrimination will be authorized on the basis of who owns a particular insurance company. If two insurance companies in State A are alike in every respect except for that fact that one of the companies has a bank for a parent, that insurance company will have to get specific authorization from the legislature of State B in order to compete in State B. No such discriminatory barrier will exist for the other insurance company, even if it is owned by, for instance, a securities firm or a foreign parent. Why should we discriminate against an insurance company owned by an American bank and in favor of an insurance company owned by a foreign industrial or commercial firm?

This patchwork of conflicting and unworkable provisions governing insurance activities is the antithesis of financial modernization legislation designed to eliminate special interest protectionism and promote competition among the various segments of the financial services industry. These provisions should be stricken from the bill.

TITLE V

To strengthen the banking system, the legislation also must give the industry the opportunity to reduce its costs. Provisions in the legislation such as those that will enable banks to branch across State lines are designed for this purpose.

Unfortunately Title V goes in the opposite direction: it will increase costs for commercial banks. Worst of all, once again under Title V the Federal Government will be imposing costs on banks that are not imposed on other competitors in the financial services sector.

The government check cashing/lifeline banking provisions will drive up costs for banks, but the same expenses will not be imposed on the mutual funds that are direct competitors of commercial banks. These costs will be imposed on banks even though the need for mandating government check cashing/lifeline banking services has never been demonstrated. We should remember that just last June, the full Senate rejected an amendment containing similar provisions by a vote of 55–43.

Even if it could be demonstrated that there is a limited segment of the population that cannot secure adequate government check cashing/lifeline banking services, is this the time to impose yet another layer of discriminatory costs on our nation's troubled banking sector? Similarly, Truth in Savings and Fair Lending Enforcement have worthy objectives, but they too will drive up costs for commercial banks.

Title V is contrary to the needed focus of the legislation and should be deleted.

JAKE GARN.

ADDITIONAL VIEWS OF SENATORS GARN AND D'AMATO ON INTERNATIONAL BANKING PROVISIONS

Hidden in the fine print of the banking legislation reported by the Senate Banking Committee are a number of anticompetitive provisions likely to restrict permissible activities of U.S. banks in foreign markets and deny foreign banks opportunities available to U.S. banks in our market. These restrictions have become part of the legislation without ever being proposed in the Treasury study on modernizing the financial system or ever being raised during months of hearings in Committee. They have appeared despite the fact that they offer no obvious benefits either for U.S. consumers or the safety of the banking system. We do not believe that they represent the intent of the Committee and we intend to press for their elimination from the bill.

It is easy to miss these restrictions because a broad reading of the bill would seem to indicate that investment restrictions on banks, and firewalls between banking and securities affiliates, were intended to apply only to the U.S. market, not to companies or activities based outside the United States. This is the thrust of the revised section 10 of the Bank Holding Company Act. However, this approach is contradicted in a number of places in the bill. Investment in corporate securities outside the United States, long permitted under section 25 and 25(a) of the Federal Reserve Act, would be barred by a provision intended to eliminate investment by banks in non-investment grade bonds. Previously permissible financial dealings between a U.S. bank and its foreign securities affiliates could be jeopardized by extension of firewall limitations internationally. These provisions would undermine the international competitiveness of U.S. banks.

Foreign banks will face a similar problem with firewalls. As drafted, language in Title VI expands the firewall requirements in section 10 of the Bank Holding Company Act to cover transactions between a foreign bank parent and securities affiliates both in the United States and internationally. The extraterritorial reach of the firewall is clearly wrong. But even its implications in the U.S. market are excessive for two reasons.

First, instead of a foreign bank parent being treated as a holding company as under the International Banking Act, it would face restrictions on its dealings with a securities affiliate as if its funds were insured by the FDIC. This would severely limit its ability to invest in or lend to a U.S. securities affiliate. Second, identical application of firewalls, even in the U.S. context, could produce identical but not equitable treatment of foreign banks. A principal purpose of firewalls is to prevent insured funds from being gambled on the stock market. Since activities of most foreign banks do not place insured funds at risk, regulatory discretion in addressing this distinction is necessary.

It is important that these problems be corrected as we move through the legislative process. The principal goal of this legislation is to modernize the rules of our financial system so that our banks can become more competitive at home and abroad. If we produce legislation that throws roadblocks in the way of U.S. banks abroad and then proceeds to do the same to foreign banks here, that may well qualify in some strange way as equal treatment. But it will be a mistake for the United States and for the efficient flow of capital worldwide.

One difficulty in getting this issue right is the state of flux in which we find the concept of national treatment. Treasury justified its so-called 'roll up' provision as national treatment because it required identical legal structures for U.S. and foreign banks. This change would represent a basic change in U.S. policy. Identical structure has never been required under the International Banking Act and Treasury itself, in its National Treatment studies, has criticized strict adherence to identical rules as a potential denial of national treatment. Furthermore, Treasury has attacked foreign requirements for U.S. banks to operate through subsidiaries abroad as a denial of competitive opportunity.

The Committee rejected Treasury's narrow concept of national treatment in rejecting Treasury's structural requirements. Even so, some will question whether the Committee approach is entirely faithful to the principle of national treatment.

In the first place, the Committee would subject all judgments regarding capital equivalency by the Federal Reserve, the independent regulatory of foreign banks, to a second opinion by the Treasury. While concern over the willingness and ability of the Federal Reserve to hold foreign banks to appropriate capital standards may be legitimate, the Committee neither held hearings on the issue nor received any complaints from U.S. banks about preferential treatment of foreign banks. Treasury may play a useful role in this area but absent any specific motivating problem, the requirement could create the impression that national treatment is being denied since Treasury has no such role in domestic bank applications.

Second, despite rejecting the roll up requirement as inconsistent with national treatment, the Committee retained at least the potential for a roll up in several places in the bill. It is retained in the backup authority granted to the Federal Reserve to require a subsidiary if necessary to verify capital adequacy. It is retained in the study to examine if all foreign banks in the United States should be required to operate through subsidiaries. It is present in direct form in the provision that would compel foreign banks that engage in retail deposit taking (deposits below $100,000) through insured branches to form a subsidiary for this purpose. This requirement would affect less than thirty banks, mostly from smaller countries like Israel, Ireland, Spain, Greece that have caused no losses to the insurance fund and appear to be good corporate citizens. This is an issue on which additional evidence is being gathered and which will require further consideration.

In order to get this legislation right, the Congress and the Executive agencies have to get straight what is meant by national treatment and how best to apply it. If we claim to offer national treatment while at the same time denying foreign banks equality of competitive opportunity, we can hardly expect to maintain the benefits of a large and open capital market for the future or to achieve meaningful leverage in opening foreign markets through the Fair Trade in Financial Services legislation.

JAKE GARN.
ALFONSE M. D'AMATO.

ADDITIONAL VIEWS OF SENATORS GARN, D'AMATO AND MACK

Much has been said about the importance of providing the Bank Insurance Fund (BIF) with the resources needed to meet its commitments to insured depositors and the importance of reforming deposit insurance; but sufficient emphasis has not been given to the importance of taking the legislative actions necessary to enable the banking industry to become efficient and viable, thereby avoiding a similar crisis for BIF in the future. As Treasury Secretary Nicholas Brady told the Banking Committee in testimony last February:

> If we leave the job half done—if we tinker with the problem—then we'll probably be back again, sooner or later, recapitalizing BIF, perhaps the next time with taxpayer money.

FDIC Chairman Seidman was making the same point when he told the Committee in April that:

> Reform of the deposit insurance system must include reform of the antiquated legal structure burdening the financial industry in general and the banking industry in particular. A healthy deposit insurance system depends ultimately on the existence of a healthy banking system.

Federal Reserve Board Chairman Alan Greenspan echoed the identical theme:

> The best protection for the insurance fund is to be certain that we have strong banking organizations. Authorizing wider activities for holding companies with well-capitalized bank subsidiaries would increase the efficiency of our financial system by permiting such organizations to respond more flexibly to the new competitive environment in banking here and abroad.

Simply put, outdated laws relating to financial structure are largely responsible for the current BIF crisis. Bad as the situation is, we nevertheless are fortunate that the banking industry still appears to possess the resources needed to recapitalize its own insurance fund without the use of taxpayer money. But if Congress fails to follow the Administration's leadership in seeking to reverse the industry's deterioration, there inevitably will be another BIF crisis in the future; and by then, the industry may be too weak to recapitalize the BIF without taxpayer assistance.

The weakened condition of the U.S. banking industry is reflected in the dramatic decline of its international competitive position in recent years. As Secretary Brady told the Banking Committee:

> Today, the United States does not have a single bank among the world's 25 largest. Twenty years ago we had seven . . . [A]gainst the backdrop of an economy that is twice the size of our nearest competitor's. I wonder if anyone can explain the complete absence of U.S. banks from the list of world leaders. . . . Would we be comfortable with no aerospace companies in the world's top 25? No pharmaceutical companies? No computer manufacturers?

Given the contribution of outdated financial-structure laws to the current problems in the banking industry, it is hard to understand the logic of those individuals who argue that Congress should do nothing this year but provide funding for the BIF. Even harder to understand is the logic of those individuals who argue that Congress should not only fail to enhance the ability of banking organizations to compete in today's financial services marketplace, but that Congress should actually roll back the steps toward enhanced competitiveness achieved by the banking industry in state legislatures, in the courts and through the regulators.

INTERSTATE BANKING

One essential way in which S. 543. would enhance the ability of the commerical banking sector of our financial services industry to revitalize itself would be through authorization of interstate branching, while protecting states' rights by giving a state three years to opt out of interstate branching. As Chairman Seidman told the Committee:

> Interstate banking restrictions have contributed to the increased risk in the nation's banking industry and to the decrease in banks' competitiveness. Removal of these restrictions would pemit lower risk through geographic diversification of lending. Banks also would be able to expand their operations to match the expansion of banking markets created by technology and economic growth. These archaic geographic restrictions will become even more unpalatable in the near future as the European Community eliminates restrictions on branch banking.

According to Alan Greenspan:

> What interstate banking promises is wider consumer choices at better prices and, for our banking system, increased competition and efficiency, the elimination of unnecessary costs associated with the delivery of banking services, and risk reduction through diversification. The Board continues to urge its prompt adoption.

SECURITIES ACTIVITIES

Another essential way in which S. 543 would give our financial services industry the ability to revitalize itself would be by repealing the Glass-Steagall Act and thereby permitting affiliations of commericial banks with securities firms. This affiliation could only be effected through the use of a holding company: i.e. a holding company would be allowed to own both a full-service commerical bank and a securities firm. The holding company would be supervised and regulated by the Federal Reserve (Fed). Like all other securities firms, the securities subsidiary would be regulated by the Securities and Exchange Commission (SEC). Like all other commerical banks, the bank subsidiary would be regulated by the Fed, the Comptroller of the Currency or the Federal Deposit Insurance Corporation (FDIC).

A principal cause of the deterioration in the financial health of commercial-banking organizations has been the incursion of securities firms into lines of business that were once the bread-and-butter business of commercial banks. As FDIC-Chairman nominee Bill Taylor told the Banking Committee during his confirmation hearing:

> * * * certainly, you can't look at banks today and not recognize the fact that their franchise has, indeed, been invaded and invaded for some time.

Whereas virtually all companies once relied on commercial banks for their short-term commercial loans, today corporations with superior credit ratings use commercial paper underwritten by securities firms for their short-term credit needs. Whereas banks were once virtually the only provider of transactions accounts, securities firms today offer mutual funds that can be used in place of traditional checking accounts.

Banks and securities firms are in the same basic business: financial intermediation. That is, they bring together entities in our economy having excess funds and entities in our economy needing additional funds. Securities firms have been able to take business away from commercial banks because they are not subject to many of the costs imposed on commercial banks. Thus, a mutual fund offering third-party payment services is not subject to the capital requirements, deposit insurance premiums and sterile reserve requirements imposed on a bank offering a competing checking account.

Similarly, if an individual deposits his savings in a commercial bank that in turn makes a commercial loan to a company needing working capital, the bank must hold capital and sterile reserves against the individual's deposit as well as pay deposit insurance premiums on it. But if the individual buys shares in a mutual fund which invests in commercial paper underwritten by a broker/dealer, no capital requirement is imposed on the mutual fund, no sterile reserves must be held by the mutual fund, and no deposit insurance premiums need to be paid by the mutual fund.

Economic historians say the railroads got into trouble as transportation technology changed because government failed to recognize railroads were in the transportation business, not just the railroad business. Government failed to let the railroads remain competitive by using new technologies. Commercial banks are in the business of financial intermediation and if government continues to make banks the high-cost providers of intermediation services, government can guarantee the demise of the banking industry.

At his confirmation hearing, Bill Taylor also related securities activities, as well as insurance activities, to the international competitiveness of U.S. banking organizations when he told the Committee:

> * * * no matter what the Congress does with respect to the securities powers or insurance powers, the world's large banks in many countries are redefining banking to include those services. And whether or not you are able to compete in the international markets without those services, I think one should be quite skeptical about.

COMMERCE AND FINANCE

As Chairman Seidman told the Committee:

> The ultimate goal of any efforts at deposit insurance reform and industry restructuring should be to place banks on a safer and sounder financial footing over the long run. Allowing banks to affiliate with diversified financial and nonfinancial companies—as the Treasury bill would do—would contribute to that goal.

The prohibition on commercial and industrial ownership of bank holding companies is particularly hard to understand in the case of a failing bank. If the FDIC is seeking a buyer for a failed or failing institution and the best bid comes from a commercial or industrial firm, why should the FDIC be prevented from accepting that bid?

One only needs to look at GMAC and Ford Motor Credit to see that many commercial firms already are competing for the financing business that used to be the bread-and-butter business of commercial banks. In effect, the combination of banking with commercial interests already exists in instances where an individual owns controlling interest in a bank as well as controlling interest in a commercial firm.

The combination of commerce and finance with insured depositories already exists in the thrift industry. In fact, Ford Motor Company owns the nation's largest S&L.

Finally, the prohibition on commercial and industrial firms owning banks will create an unfair competitive disadvantage for a securities firm that is affiliated with a commercial firm; for unlike other securities firms under this bill, that firm will be prohibited from affiliating with a commercial bank. Thus, under this legislation, Kidder Peabody could not affiliate with a commercial bank because Kidder's parent is a commercial firm, General Electric.

CONCLUSIONS

The time has come to stop playing politics with a sector of our nation's economy as important as financial services, and commercial banking in particular. Certainly, Congress must act to provide the loss funds and the working capital monies needed by BIF to meet the government's commitment to insured depositors in commercial banks. But as Secretary Brady told the Banking Committee, if all Congress does is provide funding for BIF, Congress will have left "the job half done."

Moreover, if Congress does not act now to restructure the financial services industry in line with today's market realities, it will only be a matter of time before BIF will once again be out of money and, next time, the taxpayer may be stuck with the bill.

Jake Garn.
Alfonse M. D'Amato.
Connie Mack.

ADDITIONAL VIEWS OF SENATOR ALFONSE M. D'AMATO

Regrettably, I must express my disappointment with this Committee's efforts to fashion comprehensive legislative reform of the financial services industry. S. 543 does not adequately reflect today's economic realities. In my view, S. 543 does not provide sufficient reform of the financial industry to be considered comprehensive reform.

At the start of this Congress, the Administration submitted legislation to strengthen the deposit insurance system and to modernize our financial services laws. It would have permitted broad affiliation among financial services providers and knocked down the deteriorating barriers that were put in place sixty years ago. It would have also attracted much needed capital from commercial firms into the banking system.

The Administration's bill was modeled after legislation I introduced in the 100th and 101st Congresses, the "Depository Institution Affiliation Act" (DIAA). The DIAA moved beyond outdated perceptions of bank powers, securities powers, insurance powers, and real-estate powers and provided a comprehensive framework permitting affiliations among all financial services providers.

The DIAA would have enabled strongly capitalized banks to establish a diversified holding company structure to affiliate with other businesses. A company that chose this alternative regulatory format could engage in an expanded range of activities with and through its depository institution and other affiliates. Non-depository financial and commercial activities would be required to be conducted through separately capitalized subsidiaries.

This structure would have allowed the diversified holding company to take advantage of consolidated earnings, while strong firewalls would have prevented the use of federally insured funds to assist the parent holding company.

The importance of accomplishing broad reform was stressed at the outset of this Committee's consideration of S. 543. As Chairman Seidman pointed out in testimony before this Committee in April: "* * * [T]he problems affecting the industry and the deposit insurance system have intensified. A comprehensive approach is necessary in considering banking and deposit insurance reform."

Chairman Greenspan echoed this sentiment in that hearing, stating that the Treasury bill provisions should be included along with S. 543: "These broader reforms would make our banking system more efficient, better able to serve the public, and create an environment for a safe, sound, and profitable banking system."

The Committee's efforts to hit the target of financial reform fall far short of the mark. This bill purports to repeal Glass-Steagall because it permits banks and securities firms to affiliate through a holding company. In actuality, however, many securities firms will be precluded from affiliating with banks because the securities firms are owned by or affiliated with other financial services or commercial firms. The Committee has effectively paved a one-way street that blocks entry by most securities firms.

As a general matter, the Committee's adherence to the "traditional" separation of banking and commerce limits the universe of those who may own banks. S. 543 reflects, in my view, the erroneous conclusion that any commercial firm that seeks to affiliate with a bank is suspect. The FDIC took a contrary view in its study *Mandate for Change*, when it observed that "* * * supporters of stricter regulation pointed to the potential for abuse when banking and commercial enterprises are controlled by the same owners; but, in fact, little evidence of abuse threatening the safety and soundness of banks surfaced during the half century of unregulated bank holding company existence."

Commercial companies account for approximately 80% of capital in the United States. Disallowing commercial ownership of banks significantly reduces the possibilities for infusing much needed capital into the banking system. As Chairman Seidman told this Committee in April, "* * * banks should be permitted to affiliate with both financial and nonfinancial firms * * * [t]he primary benefit of expanded affiliation is that it will potentially provide new sources of capital to banking organizations."

Further, the Committee seemingly ignores the reality of numerous commercial firm affiliations that exist today. As the Treasury Study points out, statutory and regulatory gaps have permitted the creation of many such diversified institutions. General Electric, American Express, American Can, BankAmerica, Equitable Life Assurance, Prudential Insurance, and Sears Roebuck are all affiliated with securities firms and depository institutions. Sears Roebuck currently provides consumer credit for customers with its Discover card, and includes Allstate Insurance, Dean Witter, and both a federally insured thrift and a bank under its diversified financial firm umbrella.

Moreover, it has been demonstrated that strong diversified parent companies provide necessary capital to their financial services subsidiaries. Ford has injected $1.5 billion into its First Nationwide Bank; American Express has invested $1.04 billion in its Shearson subsidiary; and General Electric put $550 million into its Kidder Peabody subsidiary. The Treasury Study points out:

> The development of these broadly diversified firms has often proven beneficial to the economy at large, and financial markets in particular. Most important has been the ability and willingness of such firms to strengthen the capital positions of their financial services subsidiaries: Ford continues to provide capital for its thrift operations, while Prudential insurance and American Express do likewise for their securities firms. The stability brought to the financial markets in this way is a net benefit to the economy overall.

Capital is one of the essential elements of a strong banking system. A strong banking system is the foundation of a strong economy. Right now we have neither. Erosion of the bank franchise has significantly weakened the banking industry and the resulting credit crunch is crippling our economy. Banks are unable or unwilling to make loans to even their most creditworthy customers.

Comprehensive legislation will enable banks to become stronger by allowing them to diversify their products and avoid the financial trauma resulting from geographic concentration. Stronger, more diversified banks will be less vulnerable to economic downturns and able to lend to customers in both good times and bad. Credit is the lifeblood of the economy. Without strong banks, there will be no source of credit to individuals and small businesses who do not have access to the securities markets. Failure to adopt comprehensive reform of the financial services industry will only continue to exacerbate the current credit crunch.

Not only does this bill fail to go far enough to modernize our financial services industry, it falls short of providing sufficient protection for the American taxpayer. Strong firewalls between banks and other affiliates are essential to protect the federal deposit insurance fund. An early version of the Committee Print originally contained firewall provisions identical to those which were in the Proxmire Financial Modernization Act adopted by the Senate 94-2 in 1988. These firewalls, however, were weakened by the Committee during mark-up.

One of my longstanding objections to that Proxmire bill was that it did not contain sufficient firewalls to protect insured funds from the activities of a bank's securities affiliate. Given the tenuous state of the banking industry and need for strong safeguards against further depletion of the BIF, I am chagrined that the firewalls in the bill passed by the Committee are even less stringent than before.

This Committee has stated the objective of increasing the safety and soundness of our banks—yet it has accomplished the opposite. The weak firewall provisions of this bill open up the possibility of even greater exposure to the BIF. This sentiment was echoed by many of my colleagues on the Committee during the mark-up of S. 543. Senator Bryan offered an amendment to at least restore most of the Proxmire firewall provisions. In the final vote, however, the amendment was defeated 11 to 10.

Congress needs to take a bold step forward towards comprehensive reform rather than continue edging around it. I believe Secretary Brady best articulated the situation now faced by Congress in his February testimony:

> This is not just another round in the biannual, intramural fight among financial services companies over banking reform. This time, the country needs results. Consumers need a broader choice of financial products when they go to the bank. Businesses and workers need strong, well capitalized banks that can keep lending in good times and bad. The nation needs a banking system that is strong enough to compete toe to toe with the best our international rivals have to offer. And most of all, the taxpayer needs to be spared the prospect of another costly and unnecessary cleanup.
>
> The time has come to address these problems at their core; to deal with them decisively and comprehensively; and to turn this situation around. The laws must be changed to foster a safe and financially strong banking system where the number of costly failures is dramatically reduced. Banking regulation

must fit the reality of today. It is time to let the banks catch up with their customers.

I regret that this Committee could not fashion comprehensive legislation to serve the fundamental needs of both consumers and taxpayers alike.

ALFONSE M. D'AMATO.

ADDITIONAL VIEWS OF SENATOR PHIL GRAMM

GENERAL COMMENTS ON THE CHAIRMAN'S REPORT

It is unfortunate that courts often look to the report language that accompanies a bill approved by a Committee in order to discover legislative intent. Doing so with this bill could be dangerous. In reality, while a Committee votes on the content of actual legislation, it has little countrol over the content of the explanatory material contained in the report. I find it disappointing that in too many instances this report contains views that were not considered, let alone expressed, by the Committee. Frequently, only one side of a provision that is the result of careful compromise is given full expression. I urge my colleagues (and the courts, should this bill ever find its way in to the law books) to look to the transcript of the Committee debate rather than this report to discover the views of the Committee.

WITH REGARD TO THE BILL

This legislation is a case of a good bill gone bad. The Secretary of the Treasury sent to the Congress legislation that, if adopted in its broad outlines, would result in a stronger, healthier, more modern financial system that would meet the financial service needs of American consumers and businesses. The bill adopted by the Banking Committee, however, while containing many good provisions, would, taken as a whole, result in a balkanized financial service system laden with increased regulation, wholly inadequate to pull the nation's banking industry out of its current nosedive.

For example, in the attempt to remove barriers to interstate bank branching, the bill would create second-class banking citizens, determined by the sole criterion of where a bank may have its home office. Under this limitation, a bank headquartered in Casper, Wyoming that sought to establish branches in Idaho would not be able to do so by purchasing a bank if that would cause the bank to have more than a 30% share of the banking business in Idaho.

This is not a limitation on concentration, because the provision applies only to out-of-state banks. A bank headquartered in Boise could acquire every other bank in Idaho, even if it alredy owned 30% or more of the banking assets in the state. Moreover, the out-of-state bank would still be able to expand into Idaho, to whatever size it wished and the market would bear, but it could do so only by establishing new branches, perhaps right across the street from the branches of the bank it might otherwise have purchased. In a state that is already overbanked, this could be a recipe for disaster. Even if a bank were failing, the out-of-state bank could not exceed the 30% limitation to acquire the failing bank unless it received explicit permission by an act of the state legislature.

An even more egregious example of this balkanization of our national economy is contained in the insurance provisions of the bill. Here we find barriers to interstate commerce based not only on where a business may have its headquarters, but also on who owns the business. Currently, all insurance companies conduct their business in each state under the same set of rules. Under this bill, that would all change if an insurance company were acquired by a bank. While its competitors could operate freely across state lines, an insurance company owned by a bank could do so only with the explicit approval of the legislature of each state where it wished to market its products. This has nothing to do with the sale of insurance by banks, which I do not support. This is a limitation that would apply to the sale of insurance through tradition channels, an unfair limitation based upon nothing more than ownership of the company.

The United States already has experimented with this economic structure, and it almost destroyed the nation. We were on the verge of losing everything we had gained by the American Revolution when the founding fathers fortunately scrapped the old Articles of Confederation in favor of the Constitution. One of the most important effects of the Constitution was to tear down the barriers to interstate commerce. Article I, Section 8 of the Constitution charges Congress with the responsibility for protecting and promoting interstate commerce. For 200 years Congress has done so, and the whole world has benefitted from the economic prosperty that was created. I hope that the Congress will not blemish that record, the record of the world's largest national economy, by adopting the provisions of this bill that return us to the sad days where rules of commerce changes at each state border.

WITH REGARD TO TITLE V

Title V of the bill continues the unfortunate practice of treating banks as thorugh they were public utilities, mandating that they provide services designed in Washington by people who never have to face the rigors of the marketplace. Somehow, in spite of the entire history of the failure of totalitarianism in the 20th Century, there persists the belief that government can do better than the marketplace in allocating resources to meet consumer's wants and needs.

The bill includes provisions that have often been offered and never passed by vote on the Senate floor to require banks to provide Washington-designed basic banking accounts and to cash all government checks. In fact, the case has not been made that the market is failing to meet these needs where the demand for them exists.

These governments mandates should be dropped from the bill, and the Congress should focus on what is necessary to return banks to a condition of safe and sound growth and prosperity that will exorcise the specter of a government bail-out of the Bank Insurance Fund.

PHIL GRAMM.

ADDITIONAL VIEWS OF SENATOR MACK

The Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991 is an important step forward in modernizing our financial institution system, recapitalizing the Bank Insurance Fund and providing the banking regulators the tools necessary to protect our nation's taxpayers from having to pay on the over 1 trillion dollar contingent liability of the Federal guarantee of deposits. This bill ensures that the Bank Insurance Fund will be able to meet the commitment the Federal Government made to depositors over 50 years ago and helps to strengthen both the regulators and the financial institution system to diminish the possiblity of a crisis in future economic downturns.

The improvement of the competitiveness of our nation's banking system is important, however, I have some concerns that this legislation increases the franchise value of our nation's largest banks relative to the value of small community banks. In addition, the cost of compliance for the social regulation included in this legislation is probably greater for our nation's small banks relative to larger institutions.

Title V of the bill adds several new regulatory burdens on financial institutions that are unrelated to the safety and soundness of our banking system. Banks contend with a host of regulations unrelated to safety and soundness. The list of consumer legislation alone includes: The Truth in Lending Act, The Electronic Funds Transfer Act, The Consumer Leasing Act, The Equal Credit Opportunity Act, The Expedited Funds Availability Act, The Community Reinvestment Act, The Home Mortgage Disclosure Act, The Real Estate Settlement Procedures Act, The Fair Credit Reporting Act, and the Fair Housing Act. All of these laws were intended to address legitimate and laudable social interests. However, as experience with consumer legislation has vividly and repeatedly demonstrated, regardless of the simplicity of the legislative concept, that concept inevitably translates into unnecessarily complicated and expensive regulations. Moreover, while no single regulation can be characterized as "most burdensome," the aggregate burden of the litany of banking regulations ultimately affects banks' operations, their ability to sever customers effectively, and the price paid by consumers for bank products.

In the last five years, banks have been subject to ten new or amended consumer-related laws, many of which have created truck loads of paper reports and disclosure requirements. Too often, when these bills are passed, no consideration is given to the cost of the regulations, whether these costs are justified given the benefits, the disproportionate impact on small versus large institutions, or whether a less burdensome alternative will achieve the goals of the legislation.

The Committee has recognized the concerns over increased regulatory burden and has adopted a series of amendments offered by Chairman Riegle in Title V that address these concerns in a modest way. The bill also directs the Federal banking agencies to examine current practices to enforce and monitor compliance with a number of current laws that affect depository institutions, evaluate whether those practices result in any burdens on depository institutions that could be reduced without diminishing the effectiveness of those laws, and, if such reductions are possible, take appropriate steps to bring them about. While this recognition is an important step in the relief of this regulatory burden, the bill goes on to add several new consumer related provisions that have nothing to do with the safety and soundness of our financial institutions.

These new laws, by themselves, would probably not cause an undue burden on our financial institutions. When these laws are taken into consideration with all of the other consumer related provisions already in existence, as well as all of the changes in existing laws being brought about by this legislation and by the regulators themselves, the task of compliance becomes immense.

The costs of compliance are often understated or ignored because the statutory solutions appear deceptively simple. Yet, implementation and maintenance of a single regulation demands the energy of numerous bank departments. Examples of expenses include: legal fees for interpretation and implementation, collection and destruction of old form, devising new forms, designing complying programs and products, paying for additional labor, hosting internal and external meetings, designing and purchasing computer technology and resources, printing new forms, mailing forms and statements, handling inquiries and misunderstandings, purchasing compliance education and auditing tools, training and retraining personnel, monitoring compliance, and meeting and reporting to regulatory examiners. The accumulation of the varied and numerous consumer-related regulations has reached such heights that even small banks must devote staff exclusively to compliance issues. For small banks in particular, the more employees working in the back office means fewer employees in the front to serve customers. In addition, every dollar spent on compliance with these new laws represent about 12 dollars which won't be available to lend to credit worthy individual because every dollar in capital supports about $12.50 in loans, more if the loans are used for housing.

The present economic circumstances and the sweeping changes made in other portions of this legislation makes it an inappropriate vehicle for new regulatory burdens unrelated to the safety and soundness of our financial institutions. More should also be done to help reduce the regulatory burden on our financial institutions and the disproportionate impact of social regulation on our small community banks.

CONNIE MACK.

ADDITIONAL VIEWS OF SENATOR WILLIAM V. ROTH, JR.

The economy is failing, in no small part, because of the credit crunch. Banks are not extending credit because of capital shortages. Capital is short because banking is not currently profitable. Banking is not profitable because of the effect of antiquated banking laws, under which the former bank customers were free to go to other providers of banking services while potential customers of new banking products in securities and insurance have been effectively shut out.

The Administration forwarded to Congress a true reform package to increase the profitability of banks by opening doors to securities and insurance customers. However, in various committee actions in both the House and the Senate, the financial competitors of the banks have used the opportunity for reform to further close the doors on competition. That is why what once was heralded as reform is now denounced as retreat.

The most glaring example of this reversal is in the area of insurance. Whereas the Administration bill would have federally authorized banks to have insurance powers, S. 543 not only strikes such federal authorization but turns tail and federally restricts any State authorization. Since the Committee action violates our two-hundred-year commitment to a national economic union, since the very purposes of the Committee action is to stop competition in insurance for reasons totally unrelated to banking policy, and since the Committee action, regressive as it is for all America, specifically discriminates against my State of Delaware, I respectfully dissent from reporting this legislation.

Try as it may be provide a rational policy explanation for the Committee's action, the majority report fails. This is understandable because the insurance lobby took the Committee by storm and dictated the terms of surrender. This is why the majority report embarrassingly justifies the insurance lobby's position by asserting that there is already enough competition in insurance, as if it were common practice for Congress to monitor levels of competition, lest they rise too high, and whenever they do, statutorily cut them off.

As state above, there are three major problems. First, the Committee's action violates one of the paramount principles governing our country—that we are one economic union. One State may not wall itself off from other States and impose barriers to interstate commerce. That is why we decided to have Constitution. That is why Delaware was the first State to ratify it. To me it makes little difference if the principle of economic union is violated by a State or by the Congress. The evil is the same.

Nevertheless, the bill prohibits the interstate sale of a bank's insurance products to residents of other States unless such other States expressly by State statute authorize the sale of out-of-State bank insurance products in their States. What this means is that a bank insurance product may not be mailed from Delaware to Kansas unless the Kansas legislature adopts a statute expressly authorizing out-of-State bank insurance products to be sold in Kansas. As a practical matter, the enactment of such a statute would be highly unlikely. The proponents of this provision well understood that the walls they erected protecting local insurance agents from interstate competition would not be voted down.

Proponents of this provision suggest that their purpose is to protect the safety and soundness of banks that sell insurance. But they have yet to explain why it is unsafe to sell to customers in-State but unsafe to sell out-of-State.

The second major problem with the insurance provisions is their outrageously anticompetitive effect. The bill bans insurance underwriting by banks and restricts sales, as described above. The majority report argues that we already have enough competition in insurance, so much so that more competition would not lower prices to consumers. (I guess that the insurance lobby is working on this bill strictly out of patriotic fervor.)

The majority report also offers some friendly advice to banks that insurance is not a profitable activity. However, the purpose of a free economy is to allow the genius of all entrepreneurs to work toward making profits. It is not the proper role of Congress to preclude the next competitor from trying harder to do better.

Moreover, the risk of an insurance underwriter and of a banker are very similar. Banks take deposits. Insurance companies take premiums. Both promise a return of some sort. Both make investments, often identical investments. Both have failed not because they made bad deals with their depositors or their insured but because their investments went sour. Their risks are so similar that there is little to justify the separation of banking and insurance. The majority report's argument proves too much. It proves that bankers should not be in banking, since bankers should not be in any line of business where investments may fail.

If there are distinctions to be drawn between banking and insurance, it may be with respect to underwriting some forms of insurance, such as property and casualty insurance or liability insurance. But the legislation's prohibitions make no distinctions between these and other types of insurance. No such distinctions were made because the purpose was to protect the insurance industry rather than banks. No such distinctions were made because the insurance industry fears that banks will compete effectively in very safe forms of insurance, such as life insurance. No such distinctions were made because under current law, the safety of an insurance product is regulated by the State banking commissioner, the FDIC, and the insurance commissioner of every State in which the product is marketed. Safety is not the issue.

Sales of insurance by banks on a commission basis were also restricted. This is considered by most observers as relatively risk-free and safer—much safer—than banking itself. Yet that did not stop the Committee from restricting banks in this area as well. No honest observer could disagree with the conclusion that the insurance amendments were drawn to protect the insurance industry from the banking industry rather than vice versa.

The third problem with these provisions is peculiar to Delaware. The Committee report makes clear that the attack on Delaware was not inadvertent but premeditated and vindictive. That a Senate committee should take this action is regrettable, since the Senate was created as a forum to safeguard the Statehood of sovereign States.

The Committee punished Delaware because, in the absence of federal leadership in opening new horizons for banks to compete, the State enacted legislation which generally permits banks to underwrite and sell insurance in-State and nationwide. (Incidentally, the Committee Report suggests that Delaware law restricts in-State sales. The language quoted in the report was sponsored by the insurance industry, which opposes both intrastate and interstate competition from banks, to achieve that end. However, the provision, which was imposed as a condition on entry by out-of-state bank holding companies, has never been enforced because the banking commissioner believes that competition is not a "detriment" to banking and, more important, the provision is vitiated by title III of this very bill.)

The punishment imposed on Delaware is inappropriate in view of the fact that there has never been a bank failure in Delaware that has cost the FDIC a single penny. That punishment is twofold. First, whereas banks in other States that authorize insurance underwriting by banks are grandfathered with respect to their in-State customers, banks in Delaware are not. Second, while banks in other States that authorize bank sales of insurance nationwide are grandfathered, banks in Delaware are not.

There is no justification for these acts of intentional discrimination and revenge. Moreover, if the Committee believes as the report suggests that Delaware law restricts in-State competition, why did it withhold grandfather protection from Delaware banks underwriting insurance for in-State customers? It would appear that these acts of discrimination were simply gratuitous.

The Delaware legislation is a lawful attempt to modernize banking. The Second Circuit Court of Appeals has so ruled in a unanimous decision. Delaware banks have invested large sums of money to acquire insurance companies and to make all necessary arrangements to conduct business. Many casual observers believe that marketing insurance nationwide requires the consent of only the home State. That is not true. Each individual insurance product must be precleared by the insurance commissioner of each State in which the produce is to be marketed.

When a bank runs up such substantial start-up costs, it is grossly unfair to thwart the opportunity to realize profits from legal activity. The Committee accepted this argument and grandfathered all banks except those in Delaware. What purpose does such vindictive discrimination serve?

In conclusion, so long as this legislation contains provisions like those described, which are so subversive of the purpose of bank reform, I remain unable to support the legislation.

William V. Roth, Jr.

S. 543

A BILL To reform Federal deposit insurance, protect the deposit insurance funds, and improve supervision and regulation of and disclosure relating to federally insured depository institutions

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the "Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991".

(b) Table of Contents.—

Sec. 1. Short title; table of contents.

TITLE I—BANK INSURANCE FUND RECAPITALIZATION

Sec. 101. FDIC borrowing authority.
Sec. 102. Recapitalizing the Bank Insurance Fund.
Sec. 103. GAO audit of recapitalization schedule.
Sec. 104. Emergency guarantee.

TITLE II—DEPOSIT INSURANCE REFORM

Sec. 201. Full faith and credit.
Sec. 202. Improving capital standards.
Sec. 203. Accounting and auditing reform.
Sec. 204. Annual examinations.
Sec. 205. Prompt corrective action.
Sec. 206. Standards for safety and soundness.
Sec. 207. Conservatorship and receivership amendments to facilitate prompt corrective action.
Sec. 208. Backup enforcement authority of FDIC.
Sec. 209. Capital maintenance commitments.
Sec. 210. Pass-through insurance coverage.
Sec. 211. Brokered deposits.
Sec. 212. Risk-based assessments.
Sec. 213. Risk-based reinsurance.
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TITLE I—BANK INSURANCE FUND RECAPITALIZATION

SEC. 101. FDIC BORROWING AUTHORITY.

(a) TREASURY LOANS.—Section 14 of the Federal Deposit Insurance Act (12 U.S.C. 1824) is amended—

(1) by striking subsection (b); and

(2) by striking all that precedes the last sentence of subsection (a) and inserting the following:

"SEC. 14. BORROWING AUTHORITY.

"(a) TREASURY LOANS.—

"(1) AUTHORITY TO BORROW FOR INSURANCE COSTS.—The Corporation is authorized to borrow from the Treasury, and the Secretary of the Treasury (hereafter referred to as the 'Secretary') is authorized and directed to make loans to the Corporation, in accordance with this section and subject to the limitations contained in section 15(c).

"(2) Loan purposes.—The Corporation may borrow from the Secretary under paragraph (1) only such amounts as are necessary, in the judgment of the Board of Directors—

"(A) to cover losses to the Corporation incurred in protecting depositors; or

"(B) to cover administrative costs associated with resolving insured depository institutions.

"(3) Priority for repayment of loss borrowing.—

"(A) In general.—The Corporation shall apply amounts raised by semiannual assessments on members of a deposit insurance fund in the following order of priority:

"(i) Repaying as scheduled any borrowings under this subsection by that fund.

"(ii) Providing for the fund's expected operating expenses and any losses incurred by the fund in protecting depositors.

"(iii) Accumulating a cash reserve for the fund (which shall consist of cash and other liquid assets), except as provided in subparagraph (B).

"(B) Accelerated repayment required.—After a fund's cash reserve reaches $5,000,000,000, all of the fund's assessment income in excess of amounts required under clauses (i) and (ii) of subparagraph (A) for that fund shall be used for accelerated repayment of borrowings under this subsection consistent with minimizing costs to that fund.

"(4) Interim rule.—Until a risk-based assessment system becomes effective, if the Corporation has borrowings outstanding under this subsection on behalf of any deposit insurance fund or the reserve ratio of that fund remains below the designated reserve ratio, the semiannual assessment rate for that fund shall be not less than that in effect on July 15, 1991.

"(5) Terms.—The Secretary shall make a loan under paragraph (1) only—

"(A) in accordance with a written agreement between the Secretary and the Corporation that—

"(i) sets forth a schedule for repaying the loan over a period not to exceed 15 years from the date of the loan; and

"(ii) provides that the loan shall bear interest at the current market yield (as of the date of the loan) on outstanding marketable obligations of the United States of comparable maturities; and

"(B) if the Secretary determines in writing that income to the fund on behalf of which the loan will be made will be sufficient to repay the loan in accordance with the agreement.

"(6) Limit on total borrowing for insurance costs.—In no case shall the Corporation's aggregate outstanding loans under paragraph (1) exceed—

"(A) $30,000,000,000 at any time before the date on which the Bank Insurance Fund has first achieved the designated reserve ratio, as determined under section 7(b)(1), for any complete semiannual assessment period after December 31, 1991;

"(B) $10,000,000,000 at any time after the date described in subparagraph (A); and

"(C) $5,000,000,000 on behalf of the Savings Association Insurance Fund at any time.

"(7) PUBLIC DEBT STATUS.—All loans and repayments made under this subsection shall be treated as public debt transactions of the United States.

"(8) APPORTIONMENT OF LIABILITY.—A loan to the Corporation under paragraph (1) is a liability of a deposit insurance fund to the extent that the loan is used on behalf of that fund.

"(b) FEDERAL FINANCING BANK LOANS.—

"(1) AUTHORITY TO BORROW FOR WORKING CAPITAL.—The Corporation is authorized to borrow, and the Federal Financing Bank is authorized and directed to make loans in accordance with this subsection to the Corporation on behalf of the Bank Insurance Fund or the Savings Association Insurance Fund on terms prescribed by the Federal Financing Bank.

"(2) PURPOSES.—The Corporation, in any capacity, may borrow from the Federal Financing Bank under paragraph (1) only to—

"(A) directly or indirectly acquire, retain, maintain, liquidate, dispose of, or improve the assets of an insured depository institution, in the course of the Corporation's resolution activities; or

"(B) provide temporary liquidity to insured depository institutions, to the extent otherwise authorized by statute.

"(3) LIMITATION ON BORROWING FOR WORKING CAPITAL.—Aggregate loans to the Corporation under paragraph (1) may not exceed $45,000,000,000 at any one time on behalf of the Bank Insurance Fund.

"(4) EFFECT ON OTHER ENTITIES.—This subsection does not affect the eligibility of any other entity to borrow from the Federal Financing Bank.

"(c) APPROPRIATIONS.—".

(b) LIMITATION ON TOTAL OUTSTANDING OBLIGATIONS.—Section 15(c) of the Federal Deposit Insurance Act (12 U.S.C. 1825(c)) is amended by striking paragraphs (5), (6), and (7) and inserting the following:

"(5) MAXIMUM AMOUNT LIMITATION ON OUTSTANDING OBLIGATIONS.—The Corporation may not issue any note or similar obligation, and may not incur any liability under a guarantee or similar obligation, if the aggregate amount of the Corporation's outstanding obligations on behalf of either the Bank Insurance Fund or the Savings Association Insurance Fund would exceed the sum of—

"(A) the amount of cash held by the Corporation for that fund;

"(B) 90 percent of the Corporation's estimate of the fair market value of assets held by the Corporation for that fund (other than assets described in subparagraph (A)); and

"(C) the aggregate amount of outstanding loans to the Corporation under section 14(a) on behalf of that fund.

The Corporation's estimate of fair market value under subparagraph (B) shall be based on the most recent audit of the Corporation by the Comptroller General, subject to any adjustments described in paragraph (3) or (4), and taking into account any transaction occurring since the date of the audit.

"(6) OBLIGATION DEFINED.—For purposes of paragraph (5), the term 'obligation' means—

"(A) any guarantee issued by the Corporation, other than deposit guarantees;

"(B) any loans made to or notes issued by the Corporation under section 14; and

"(C) any other note, bond, or contract for which the Corporation has a direct or contingent liability for any amount.".

(c) CONFORMING AMENDMENT DEFINING DEPOSIT INSURANCE FUND.—Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) is amended by adding at the end the following:

"(y) DEPOSIT INSURANCE FUND.—The term 'deposit insurance fund' means the Bank Insurance Fund or the Savings Association Insurance Fund, as the case may be.".

SEC. 102. RECAPITALIZING THE BANK INSURANCE FUND.

Section 7(b)(1)(C) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)(C)) is amended to read as follows:

"(C) ASSESSMENT RATES FOR BANK INSURANCE FUND MEMBERS.—

"(i) IN GENERAL.—If the reserve ratio of the Bank Insurance Fund equals or exceeds the fund's designated reserve ratio under subparagraph (B), the Board of Directors shall set semiannual assessment rates for members of that fund as appropriate to maintain the reserve ratio at the designated reserve ratio.

"(ii) SPECIAL RULES FOR RECAPITALIZING UNDERCAPITALIZED FUNDS.—If the reserve ratio of the Bank Insurance Fund is less than the designated reserve ratio under subparagraph (B), the Board of Directors shall set semiannual assessment rates for members of that fund—

"(I) that are sufficient to increase the reserve ratio for that fund to the designated reserve ratio not later than 1 year after such rates are set; or

"(II) in accordance with a schedule promulgated by the Corporation under clause (iii).

"(iii) RECAPITALIZATION SCHEDULES.—For purposes of clause (ii)(II), the Corporation shall by regulation promulgate a schedule that specifies, at semiannual intervals, target reserve ratios for the Bank Insurance Fund, culminating by the end of the period determined under clause (iv) in a reserve ratio that is equal to the designated reserve ratio.

"(iv) Date for achieving designated ratio.—A schedule promulgated under clause (iii) shall provide for achieving the designated reserve ratio by the end of the period beginning on the date on which the schedule becomes effective and ending not later than the earlier of—

"(I) 15 years after that effective date, or

"(II) the number of years (rounded to the nearest whole number) after that effective date, determined as follows:

$$15 \times \left(1 - \frac{\text{reserve ratio}}{\text{designated reserve ratio}} \right)$$

"(v) Amending schedule.—The Corporation may, by regulation, amend a schedule promulgated under clause (iii), but such amendments may not extend the period determined under clause (iv).

"(vi) Procedure for extending schedule.—If, during the period determined in clause (iv), when the Bank Insurance Fund's reserve ratio is being restored to the designated reserve ratio, the Corporation determines that maintaining assessments at levels sufficient to achieve the designated reserve ratio by the end of that period would significantly increase losses to the fund or would significantly impair the availability of credit, the following procedures shall apply:

"(I) Report required.—The Corporation shall submit a report to the Congress that—

"(aa) sets forth a revised schedule of semiannual target reserve ratios for that fund, culminating in the achievement of the designated reserve ratio; and

"(bb) provides a detailed justification for the revision.

"(II) Requirement for congressional consideration.—The proposed revised schedule of semiannual target reserve ratios shall not be implemented unless the Congress, not later than 60 calendar days after receiving the report, enacts a joint resolution approving the proposed revision.

"(vii) Procedures for expedited congressional consideration.—

"(I) Joint resolution defined.—For purposes of this clause, the term 'joint resolution' means only a joint resolution the matter after the resolving clause of which is as follows: 'That, pursuant to section 7(b)(1)(C) of the Federal Deposit Insurance

Act, the Corporation may implement revisions to the schedule of semiannual target reserve ratios, culminating in the achievement of the designated reserve ratio for the Bank Insurance Fund, as proposed in the report submitted to the Congress on ______________________.', with the blank space being filled with the appropriate date.

"(II) INTRODUCTION.—On the day on which a report is submitted to the House of Representatives and the Senate under clause (vi)(I), a joint resolution with respect to the revised schedule specified in such report shall be introduced (by request) in the House of Representatives by the chairman of the Committee on Banking, Finance and Urban Affairs, for himself and the ranking minority member of the Committee, or by the Members of the House designated by the chairman and ranking minority member; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself and the minority leader of the Senate, or Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such a report is submitted, the joint resolution shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session.

"(III) REFERRAL TO COMMITTEE.—Any joint resolutions introduced in the House of Representatives shall be referred to the appropriate committee and any joint resolutions introduced in the Senate shall be referred to the Committee on Banking, Housing, and Urban Affairs.

"(IV) DISCHARGE FROM COMMITTEE.—If the committee of either House to which a joint resolution has been referred has not reported the joint resolution at the end of 30 days after its referral, the committee shall be discharged from further consideration of the joint resolution and of any other joint resolution introduced with respect to the same matter.

"(V) EXPEDITED FLOOR CONSIDERATION.—Any such joint resolution shall be considered in the Senate in accordance with section 601(b) of the International Security Assistance and Arms Export Control Act of 1976. For the purpose of expediting the consideration and enactment of joint resolutions under this subsection, a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

"(VI) JOINT RESOLUTION RECEIVED FROM OTHER HOUSE.—In the case of a joint resolution described in this clause, if, before the passage by one House of a joint resolution of that House, that House receives a resolution with respect to the same matter from the other House, then—

"(aa) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

"(bb) the vote on final passage shall be on the joint resolution of the other House.

"(VII) COMPUTING TIME PERIODS.—In computing the 60-day period referred to in clause (vi)(II) and the 30-day period referred to in subclause (IV), there shall be excluded the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain or because of an adjournment of the Congress sine die.

"(viii) SPECIAL ASSESSMENT TO RECOVER LOSSES ON FOREIGN DEPOSITS.—

"(I) IN GENERAL.—If the Corporation makes any payment with respect to foreign deposits, it shall recover the amount of that payment as soon as practicable by imposing special assessments on foreign deposits held by all members of that deposit insurance fund, beginning in the next semiannual period.

"(II) PAYMENT WITH RESPECT TO FOREIGN DEPOSITS DEFINED.—As used in this clause, the term 'payment with respect to foreign deposits' means the amount, as determined by the Corporation in its sole discretion, obtained by—

"(aa) dividing a depository institution's foreign deposits by that institution's total liabilities; and

"(bb) multiplying the resulting quotient by the estimated total loss incurred by the deposit insurance fund with respect to the institution.

"(III) CALCULATION BEFORE JANUARY 1, 1995.—Until January 1, 1995, the calculation under subclause (II)(aa) shall be based on whichever of the following amounts of foreign deposits and total liabilities yields the greater quotient under subclause (II)(aa):

"(aa) The amount of foreign deposits and total liabilities on the date on which a receiver was appointed for the institution or the Corporation initiated assistance under section 13(c) with respect to the institution.

"(bb) The average for the period from the date on which the institution was significantly undercapitalized and first received an advance from a Federal Reserve bank and ending on the date described in item (aa).

"(IV) CALCULATION AFTER JANUARY 1, 1995.—After January 1, 1995, the calculation under subclause (III)(bb) shall be based on the amounts of foreign deposits and total liabilities on the date described in subclause (III)(aa).

"(V) FOREIGN DEPOSITS DEFINED.—For purposes of this clause, the term 'foreign deposit' means any deposit described in subparagraph (A) or (B) of section 3(*l*)(5).".

SEC. 103. GAO AUDIT OF RECAPITALIZATION SCHEDULE.

Section 17(d)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1827(d)(1)) is amended—

(1) by inserting "(A) FUNDS AUDIT.—" before "The Comptroller General" and appropriately indenting that subparagraph; and

(2) by adding at the end the following:

"(B) RECAPITALIZATION AUDIT.—As part of the audit required by subparagraph (A), the Comptroller General shall perform an audit of the Corporation's compliance with any recapitalization schedule promulgated under section 7(b)(1)(C) that is in effect at the time of the audit.".

SEC. 104. EMERGENCY GUARANTEE.

(a) GUARANTEE AUTHORITY FOR REPAYMENT OF STATE BORROWINGS.—Upon the written request of the State of Rhode Island and the Providence Plantations (hereafter referred to as the "State of Rhode Island") or the Depositors Economic Protection Corporation (hereafter referred to as the "Corporation"), established by the State of Rhode Island, the Secretary of the Treasury (hereafter referred to as the "Secretary") may guarantee the repayment of borrowing by the Corporation in an amount not to exceed $180,000,000, to assist in the repayment of depositors at certain State-chartered banks and credit unions in the State of Rhode Island that are in receivership and that were not federally insured at the time they were placed in receivership.

(b) LIMITATIONS ON GUARANTEE AUTHORITY.—The Secretary may only guarantee Corporation borrowing under this section if the guarantee provided under subsection (a) has no cost to the United States Government, taking into account the guarantee fees assessed and collected under subsection (e).

(c) BORROWING ELIGIBLE FOR GUARANTEE.—The Secretary may guarantee only Corporation borrowing under this section that—

(1) occurs not more than 1 year after the date of enactment of this Act;

(2) will mature not later than 10 years after the date of such borrowing; and

(3) is scheduled to be repaid in equal installments of principal during the last 5 years of the repayment term of such borrowing.

(d) SECURITY AND RATING REQUIREMENTS FOR GUARANTEE.—

(1) IN GENERAL.—The Secretary may not guarantee the repayment of any Corporation borrowing under this section

unless the amount of the borrowing for which the guarantee is requested is fully secured—

(A) by the Corporation's grant in favor of the United States, as collateral for such borrowing, of a first mortgage lien on, and prior perfected security interest in, sufficient performing assets held or controlled by the Corporation, and any proceeds from the sale of such assets, so that the appraised market value of such pledged assets is equal to an amount that is not less than 2½ times the principal amount of such borrowing at the time of such borrowing; and

(B) by an irrevocable pledge by the Corporation of any revenue from the State of Rhode Island's sales tax which is dedicated to the Corporation under the laws of the State of Rhode Island in excess of the amount necessary to pay principal and interest on any obligation of the State of Rhode Island or the Corporation issued before the date of enactment of this Act for the purpose described in subsection (a), to the payment of the principal of, and interest on, such borrowing.

(2) INVESTMENT GRADE RATING.—The Secretary may not guarantee the repayment of any Corporation borrowing under this section unless each proposed borrowing has received the highest investment grade rating by a nationally recognized statistical rating organization.

(e) ADDITIONAL TERMS AND CONDITIONS.—In addition to security requirements under subsection (d), the Corporation shall be required to agree to the following terms and conditions in connection with the guarantee by the Secretary provided under this section:

(1) PLEDGE OF CERTAIN INCOME FOR REPAYMENT.—For each fiscal year of the Corporation, all rents, issues, profits, products, proceeds, revenues, and other income (including insurance proceeds and condemnation awards) received by the Corporation from or attributable to the assets pledged to the United States under subsection (d)(1), in excess of the amount necessary to pay the interest or principal and interest on any Corporation borrowings guaranteed under subsection (a) that is payable in such fiscal year, shall be deposited into a sinking fund or defeasance fund maintained by the Corporation irrevocably pledged and dedicated to the repayment of the principal of such guaranteed borrowings in the inverse order of the maturity of such principal installments.

(2) ASSESSMENTS AND COLLECTION.—The Secretary shall assess and collect from the Corporation, in connection with the guarantee provided under subsection (a), not less frequently than annually, a guarantee fee computed daily at a rate that is not less than one-half of 1 percent per year on the outstanding principal amount of the guaranteed borrowing. All funds received by the Secretary in payment of such fees shall be paid into the general fund of the Treasury.

(f) AUTHORITY TO PRESCRIBE ADDITIONAL TERMS AND CONDITIONS.—The Secretary may establish such additional terms and conditions in connection with the provision of a guarantee under this section as the Secretary may deem appropriate.

(g) Budget Status.—Notwithstanding the emergency need for the guarantee provided under this section, this section is subject to the Balanced Budget and Emergency Deficit Control Act of 1985 (as amended by the Budget Enforcement Act of 1990).

TITLE II—DEPOSIT INSURANCE REFORM

SEC. 201. FULL FAITH AND CREDIT.

Section 1 of the Federal Deposit Insurance Act (12 U.S.C. 1811) is amended to read as follows:

"SECTION 1. ESTABLISHMENT.

"(a) In General.—There is hereby created a Federal Deposit Insurance Corporation (hereinafter referred to as the 'Corporation'), which shall insure the deposits of banks and savings associations in accordance with this Act.

"(b) Full Faith and Credit of the United States.—The full faith and credit of the United States is pledged to pay insured deposits under this Act.".

SEC. 202. IMPROVING CAPITAL STANDARDS.

(a) Periodic Review of Capital Standards Generally.—Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following new subsection:

"(o) Periodic Review of Capital Standards.—Each Federal banking agency shall, in consultation with the other Federal banking agencies, biennially review its capital standards for insured depository institutions to determine whether those standards require sufficient capital to facilitate prompt corrective action to prevent or minimize loss to the deposit insurance funds, consistent with section 37.".

(b) Review of Risk-Based Capital Standards.—

(1) In general.—Each Federal banking agency shall revise its risk-based capital standards for insured depository institutions to ensure that those standards take adequate account of—

(A) interest-rate risk;

(B) concentration of credit risk; and

(C) the risks of nontraditional activities.

(2) International discussions.—The Federal banking agencies shall discuss the development of comparable standards with members of the supervisory committee of the Bank for International Settlements.

(3) Deadline for prescribing revised standards.—Each Federal banking agency shall—

(A) publish final regulations in the Federal Register to implement paragraph (1) not later than 18 months after the date of enactment of this Act; and

(B) establish reasonable transition rules to facilitate compliance with those regulations.

(4) Definitions.—For purposes of this subsection, the terms "Federal banking agency" and "insured depository institution" have the same meanings as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(c) CONFORMING AMENDMENT DEFINING FEDERAL BANKING AGENCIES.—Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) is amended by adding at the end the following:

"(z) FEDERAL BANKING AGENCIES.—The term 'Federal banking agencies' means the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation.".

SEC. 203. ACCOUNTING AND AUDITING REFORM.

(a) ACCOUNTING REFORM.—Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following new subsection:

"(p) ACCOUNTING REFORM.—

"(1) OBJECTIVES.—Accounting principles applicable to insured depository institutions should—

"(A) result in financial statements and reports of condition that accurately reflect the economic condition of those institutions; and

"(B) facilitate effective supervision of insured depository institutions, including prompt corrective action to resolve troubled institutions' problems with no loss or minimal loss to the deposit insurance fund.

"(2) IMPROVING ACCOUNTING PRINCIPLES APPLICABLE TO INSURED DEPOSITORY INSTITUTIONS.—The Federal Financial Institutions Coordination Council, in consultation with the Securities and Exchange Commission, shall facilitate the development of accounting principles for insured depository institutions that meet the objectives set forth in paragraph (1).

"(3) STRINGENCY.—Each appropriate Federal banking agency—

"(A) shall prescribe accounting principles applicable to insured depository institutions that are no less conservative than generally accepted accounting principles; and

"(B) may prescribe accounting principles that are more conservative than generally accepted accounting principles as appropriate to facilitate effective supervision of insured depository institutions, including prompt corrective action to resolve troubled institutions' problems with no loss or minimal loss to the deposit insurance fund.".

(b) IMPROVEMENTS IN FINANCIAL MANAGEMENT.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following new section:

"SEC. 36. EARLY IDENTIFICATION OF NEEDED IMPROVEMENTS IN FINANCIAL MANAGEMENT.

"(a) ANNUAL REPORT ON FINANCIAL CONDITION AND MANAGEMENT.—

"(1) REPORT REQUIRED.—Each insured depository institution shall annually submit to the Corporation, the appropriate Federal banking agency, and any appropriate State bank supervisor (including any State bank supervisor of a host State) a report that contains—

"(A) the information required to be provided by the institution's management under subsection (b);

"(B) the information required to be provided by an independent public accountant under subsections (c) and (d); and

"(C) such other information as the Corporation and the appropriate Federal banking agency may determine to be necessary to assess the institution's financial condition and management.

"(2) Report to be publicly available.—Annual reports required under paragraph (1) shall be made available for public inspection.

"(b) Management's Responsibility for Financial Statements and Internal Controls.—Each insured depository institution shall prepare—

"(1) annual financial statements in accordance with generally accepted accounting principles and such other disclosure requirements as the Corporation and the appropriate Federal banking agency may prescribe; and

"(2) a report signed by the institution's chief executive officer and chief accounting or financial officer, that—

"(A) states the management's responsibility for—

"(i) preparing financial statements;

"(ii) establishing and maintaining an adequate internal control structure and procedures for financial reporting; and

"(iii) complying with designated safety-and-soundness laws; and

"(B) assesses, as of the end of the institution's most recent fiscal year—

"(i) the effectiveness of such internal control structure and procedures; and

"(ii) the institution's compliance with designated safety-and-soundness laws.

"(c) Internal Control Evaluation and Reporting Requirements for Independent Public Accountants.—

"(1) In general.—An insured depository institution's independent public accountant shall attest to, and report separately on, the assertions of the institution's management contained in the internal control report required under subsection (b)(2).

"(2) Attestation requirements.—Any attestation under paragraph (1) shall be made in accordance with generally accepted standards for attestation engagements.

"(d) Annual Independent Audits of Financial Statements.—

"(1) Audits required.—The Corporation, in consultation with the Federal banking agencies, shall prescribe regulations requiring each insured depository institution to have an annual independent audit made of the institution's financial statements by an independent public accountant in accordance with generally accepted auditing standards.

"(2) Scope of audit.—In auditing any insured depository institution under this subsection, an independent public accountant shall determine and report on whether the institution's financial statements—

"(A) are presented fairly in accordance with generally accepted accounting principles; and

"(B) comply with such other disclosure requirements as the Corporation and the appropriate Federal banking agency may prescribe.

"(3) DEPOSITORY INSTITUTION SUBSIDIARIES OF HOLDING COMPANIES.—The requirements for an independent audit under paragraph (1) may be satisfied for an insured depository institution that is a subsidiary of a holding company by an independent audit of the holding company.

"(e) DETECTING AND REPORTING VIOLATIONS OF DESIGNATED SAFETY-AND-SOUNDNESS LAWS.—

"(1) IN GENERAL.—An independent public accountant shall apply procedures agreed upon by the Corporation to determine objectively the extent to which any insured depository institution or depository institution holding company has complied with designated safety-and-soundness laws.

"(2) ATTESTATION REQUIREMENTS.—Any attestation required under paragraph (1) shall be made in accordance with generally accepted standards for attestation engagements.

"(f) FORM AND CONTENT OF REPORTS AND AUDITING STANDARDS.—

"(1) IN GENERAL.—The scope of each report by an independent public accountant under this section, and the procedures followed in preparing such report, shall satisfy generally accepted auditing standards and other applicable standards recognized by the Corporation.

"(2) CONSULTATION.—In implementing this subsection, the Corporation shall consult with the other Federal banking agencies.

"(g) IMPROVED ACCOUNTABILITY.—

"(1) INDEPENDENT AUDIT COMMITTEE.—

"(A) ESTABLISHMENT.—Each insured depository institution shall establish an independent audit committee consisting only of members of the board of directors of the institution who—

"(i) are not officers, employees, or major shareholders of the institution; and

"(ii) meet any additional requirements established by the Corporation.

"(B) DUTIES.—The independent audit committee's duties shall include reviewing with management and the independent public accountant the basis for reports issued and audits made under subsections (b)(2), (c), and (d).

"(C) CRITERIA APPLICABLE TO COMMITTEES OF LARGE INSURED DEPOSITORY INSTITUTIONS.—The audit committee of each insured depository institution that the Corporation determines to be a large institution shall—

"(i) include members with banking or related financial management expertise;

"(ii) have discretion to retain independent legal counsel, at the institution's expense; and

"(iii) not include any large customers of the institution, as determined by the Corporation.

"(2) REVIEW OF QUARTERLY REPORTS OF LARGE INSURED DEPOSITORY INSTITUTIONS.—

"(A) In general.—The Corporation may require an independent public accountant retained by any insured depository institution that the Corporation determines is a large institution to conduct a review of the institution's quarterly financial reports in accordance with procedures agreed upon by the Corporation.

"(B) Report to audit committee.—The independent public accountant shall provide to the audit committee of the insured depository institution a report on any review conducted under subparagraph (A). The audit committee shall provide copies of any such reports to the Corporation, the appropriate Federal banking agency, and (in the case of a State depository institution) the appropriate State bank supervisor.

"(C) Limitation on notice.—Any reports under subparagraph (B) shall be made only for the information and use of the insured depository institution, the Corporation, the appropriate Federal banking agency, and any State bank supervisor that received the report.

"(3) Qualifications of independent public accountants.—

"(A) In general.—No insured depository institution shall retain an independent public accountant to perform services under this section unless the independent public accountant—

"(i) has agreed to provide related working papers, policies, and procedures to the Corporation, the appropriate Federal banking agency, and (in the case of a State depository institution) the appropriate State bank supervisor, if requested; and

"(ii) has received a peer review that meets guidelines acceptable to the Corporation.

"(B) Reports on peer reviews.—Reports on peer reviews shall be filed with the Corporation and made available for public inspection.

"(4) Enforcement actions.—

"(A) In general.—In addition to any authority contained in section 8, the Corporation or an appropriate Federal banking agency may, upon a showing of good cause, remove, suspend, or bar an independent public accountant from performing audit services under this section.

"(B) Joint rulemaking.—The Federal banking agencies shall jointly issue rules of practice to implement this paragraph.

"(5) Notice if accountant's services terminate.—An independent public accountant who ceases to perform services for an insured depository institution under this section shall promptly notify the Corporation in accordance with such rules as the Corporation shall prescribe.

"(h) Exchange of Reports and Information.—

"(1) Report to the independent auditor.—

"(A) In general.—Each insured depository institution that has retained an independent auditor to conduct an audit of the institution under this section shall provide the auditor a copy of the institution's most recent report of condition and most recent report of examination.

"(B) ADDITIONAL INFORMATION.—In addition to the copies of the reports required to be provided under paragraph (1), each insured depository institution shall provide the auditor with—

"(i) a copy of any supervisory memorandum of understanding with the institution and any written agreement between the institution and any appropriate Federal banking agency or any appropriate State supervisor which is in effect during the period covered by the audit; and

"(ii) a report of—

"(I) any action initiated or taken by the appropriate Federal banking agency or the Corporation during such period under subsection (a), (b), (c), (e), (g), (i), (s), or (t) of section 8;

"(II) any action taken by any appropriate State bank supervisor under State law which is similar to any action referred to in subclause (I); or

"(III) any assessment of a civil money penalty under any other provision of law with respect to the institution or any institution-affiliated party.

"(2) REPORTS TO BANKING AGENCIES.—

"(A) INDEPENDENT AUDITOR REPORTS.—Each insured depository institution shall provide to the Corporation, the appropriate Federal banking agency, and (in the case of a State depository institution) the appropriate State bank supervisor, a copy of each audit report and any qualification to such report, any management letter, and any other report not more than 15 days after receiving any such report, qualification, or letter from the institution's independent auditors.

"(B) NOTICE OF CHANGE OF AUDITOR.—Each insured depository institution shall notify the Corporation, the appropriate Federal banking agency, and (in the case of a State depository institution) the appropriate State bank supervisor if the institution's independent auditor resigns or is dismissed, or if the institution engages a new independent auditor. Such notice shall—

"(i) state the reasons for the change; and

"(ii) be provided not more than 15 calendar days after the change occurs.

"(i) REQUIREMENTS FOR INSURED SUBSIDIARIES OF HOLDING COMPANIES.—Any insured depository institution that is a subsidiary of a holding company may satisfy the requirements of this section, other than any audit requirements established under subsection (d), if—

"(1) services and functions comparable to those required under this section are provided at the holding company level; and

"(2) either—

"(A) the institution's total assets, at the beginning of the fiscal year, are less than $5,000,000,000; or

"(B) the institution—

"(i) had total assets, at the beginning of the fiscal year, of not less than $5,000,000,000, nor more than $9,000,000,000; and

"(ii) when most recently examined by the Corporation or the appropriate Federal banking agency, had a CAMEL composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating under a comparable rating system).

"(j) EXEMPTION FOR SMALL DEPOSITORY INSTITUTIONS.—If an insured depository institution's total assets at the beginning of a fiscal year do not exceed the greater of $150,000,000 or such amount (exceeding $150,000,000) as the Corporation may prescribe by regulation, this section shall not apply with respect to that institution during that fiscal year.

"(k) DESIGNATED SAFETY-AND-SOUNDNESS LAWS DEFINED.—For purposes of this section, the term 'designated safety-and-soundness laws' means statutes and regulations relating to safety and soundness that are designated under this section by the Corporation or the appropriate Federal banking agency.".

(c) EFFECTIVE DATE.—The requirements established by the amendment made by subsection (b) shall apply with respect to fiscal years of insured depository institutions that begin after December 31, 1992.

SEC. 204. ANNUAL EXAMINATIONS.

(a) IN GENERAL.—Section 10 of the Federal Deposit Insurance Act (12 U.S.C. 1820) is amended by inserting after subsection (c) the following new subsection:

"(d) ANNUAL ON-SITE EXAMINATIONS OF ALL INSURED DEPOSITORY INSTITUTIONS REQUIRED.—

"(1) IN GENERAL.—The appropriate Federal banking agency shall, not less than once during each 12-month period, conduct a full-scope, on-site examination of each insured depository institution.

"(2) EXAMINATIONS BY CORPORATION.—Paragraph (1) shall not apply during any 12-month period in which the Corporation has conducted a full-scope, on-site examination of the insured depository institution.

"(3) STATE EXAMINATIONS ACCEPTABLE.—The examinations required by paragraph (1) may be conducted in alternate 12-month periods, as appropriate, if the appropriate Federal banking agency determines that an examination of the insured depository institution conducted by the State during the intervening 12-month period carries out the purpose of this subsection.

"(4) 18-MONTH RULE FOR CERTAIN SMALL INSTITUTIONS.—Paragraphs (1), (2), and (3) shall apply with '18-month' substituted for '12-month' if—

"(A) the insured depository institution has total assets of less than $100,000,000;

"(B) the institution is well capitalized, as defined in section 37;

"(C) when the institution was most recently examined, it was found to be well managed, and its composite condition was found to be outstanding; and

"(D) no person acquired control of the institution during the 12-month period in which a full-scope, on-site examination would be required but for this paragraph.

"(5) CERTAIN GOVERNMENT-CONTROLLED INSTITUTIONS EXEMPTED.—Paragraph (1) does not apply to—

"(A) any institution for which the Corporation is conservator; or

"(B) any bridge bank none of the voting securities of which is owned by a person or agency other than the Corporation.

"(6) CONSUMER COMPLIANCE EXAMINATIONS EXCLUDED.—For purposes of this subsection, the term 'full-scope, on-site examination' does not include a consumer compliance examination, as defined in section 41(b).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective 1 year after the date of enactment of this Act.

(c) TRANSITION RULE.—Notwithstanding section 10(d) of the Federal Deposit Insurance Act (as added by subsection (a)), during the period beginning on the date of enactment of this Act and ending on December 31, 1993, a full-scope, on-site examination of an insured depository institution is not required more often than once during every 18-month period, unless—

(1) the institution, when most recently examined, was found to be in a less than satisfactory condition; or

(2) 1 or more persons acquired control of the institution.

SEC. 205. PROMPT CORRECTIVE ACTION.

(a) ESTABLISHING SYSTEM OF PROMPT CORRECTIVE ACTION.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following new section:

"SEC. 37. PROMPT CORRECTIVE ACTION.

"(a) RESOLVING PROBLEMS TO PROTECT DEPOSIT INSURANCE FUNDS.—

"(1) PURPOSE.—The purpose of this section is to resolve the problems of insured depository institutions—

"(A) with no loss or minimal loss to the deposit insurance fund; and

"(B) when loss cannot be avoided, at the least possible long-term loss to the deposit insurance fund.

"(2) PROMPT CORRECTIVE ACTION REQUIRED.—Each appropriate Federal banking agency shall carry out the purpose of this section by taking prompt corrective action to resolve the problems of insured depository institutions.

"(b) DEFINITIONS.—For purposes of this section:

"(1) CAPITAL CATEGORIES.—

"(A) WELL CAPITALIZED.—An insured depository institution is 'well capitalized' if it significantly exceeds the required minimum level for each relevant capital measure.

"(B) ADEQUATELY CAPITALIZED.—An insured depository institution is 'adequately capitalized' if it meets the required minimum level for each relevant capital measure.

"(C) UNDERCAPITALIZED.—An insured depository institution is 'undercapitalized' if it fails to meet the required minimum level for any relevant capital measure.

"(D) SIGNIFICANTLY UNDERCAPITALIZED.—An insured depository institution is 'significantly undercapitalized' if it is significantly below the required minimum level for any relevant capital measure.

"(E) CRITICALLY UNDERCAPITALIZED.—An insured depository institution is 'critically undercapitalized' if it fails to meet any level specified under subsection (c)(3)(A).

"(2) OTHER DEFINITIONS.—

"(A) AVERAGE.—

"(i) IN GENERAL.—The 'average' of an accounting item (such as total assets or tangible equity) during a given period means the sum of that item at the close of business on each business day during that period divided by the total number of business days in that period.

"(ii) AGENCY MAY PERMIT WEEKLY AVERAGING FOR CERTAIN INSTITUTIONS.—In the case of insured depository institutions that have total assets of less than $300,000,000 and normally file reports of condition reflecting weekly (rather than daily) averages of accounting items, the appropriate Federal banking agency may provide that the 'average' of an accounting item during a given period means the sum of that item at the close of business on the relevant business day each week during that period divided by the total number of weeks in that period.

"(B) CAPITAL DISTRIBUTION.—The term 'capital distribution' means—

"(i) a distribution of cash or other property by any insured depository institution or company to its owners made on account of that ownership, but not including—

"(I) any dividend consisting only of shares of the institution or company or rights to purchase such shares; or

"(II) any amount paid on the deposits of a mutual or cooperative institution that the appropriate Federal banking agency determines is not a distribution for purposes of this section;

"(ii) a payment by an insured depository institution or company to repurchase, redeem, retire, or otherwise acquire any of its shares or other ownership interests, including any extension of credit by the insured depository institution to finance an affiliated company's acquisition of those shares or interests; or

"(iii) a transaction that the appropriate Federal banking agency determines, by order or regulation, to be in substance a distribution of capital to the owners of the insured depository institution or company.

"(C) CAPITAL RESTORATION PLAN.—The term 'capital restoration plan' means a plan submitted under subsection (e)(2).

"(D) COMPANY.—The term 'company' has the same meaning as in section 2 of the Bank Holding Company Act of 1956.

"(E) COMPENSATION.—The term 'compensation' includes any payment of money or provision of any other thing of value in consideration of employment.

"(F) RELEVANT CAPITAL MEASURE.—The term 'relevant capital measure' means the measures described in subsection (c).

"(G) REQUIRED MINIMUM LEVEL.—The term 'required minimum level' means, with respect to each relevant capital measure, the minimum acceptable capital level specified by the appropriate Federal banking agency by regulation.

"(H) SENIOR EXECUTIVE OFFICER.—The term 'senior executive officer' has the same meaning as the term 'executive officer' in section 22(h) of the Federal Reserve Act.

"(I) SUBORDINATED DEBT.—The term 'subordinated debt' means debt subordinated to the claims of general creditors.

"(c) CAPITAL STANDARDS.—

"(1) RELEVANT CAPITAL MEASURES.—

"(A) IN GENERAL.—Except as provided in subparagraph (B)(ii), the capital standards prescribed by each appropriate Federal banking agency shall include—

"(i) a leverage limit; and

"(ii) a risk-based capital requirement.

"(B) OTHER CAPITAL MEASURES.—An appropriate Federal banking agency may, by regulation—

"(i) establish any additional relevant capital measures to carry out the purpose of this section; or

"(ii) rescind any relevant capital measure required under subparagraph (A) upon determining (with the concurrence of the other Federal banking agencies) that the measure is no longer an appropriate means for carrying out the purpose of this section.

"(2) CAPITAL CATEGORIES GENERALLY.—Each Federal banking agency shall, by regulation, specify for each relevant capital measure the levels at which an insured depository institution is well capitalized, adequately capitalized, undercapitalized, and significantly undercapitalized.

"(3) CRITICAL CAPITAL.—

"(A) AGENCY TO SPECIFY LEVEL.—

"(i) LEVERAGE LIMIT.—Each Federal banking agency shall, by regulation, specify the ratio of tangible equity to total assets at which an insured depository institution is critically undercapitalized.

"(ii) OTHER RELEVANT CAPITAL MEASURES.—The agency may, by regulation, specify for 1 or more other relevant capital measures, the level at which an insured depository institution is critically undercapitalized.

"(B) CRITERIA FOR SPECIFYING LEVEL.—

"(i) IN GENERAL.—The level specified under subparagraph (A)(i) shall be high enough so that the problems of insured depository institutions can be resolved with no loss or minimal loss to the deposit insurance fund by carrying out subsection (h) when the institution's capital falls below that level.

"(ii) LIMITS.—The level specified under subparagraph (A)(i) shall require tangible equity in an amount—

"(I) not less than 2 percent of total assets; and

"(II) except as provided in subclause (I), not more than 65 percent of the required minimum level of capital under the leverage limit.

"(C) FDIC's CONCURRENCE REQUIRED.—The appropriate Federal banking agency shall not, without the concurrence of the Corporation, specify a level under subparagraph (A)(i) lower than that specified by the Corporation for State nonmember insured banks.

"(d) PROVISIONS APPLICABLE TO ALL INSTITUTIONS.—

"(1) CAPITAL DISTRIBUTIONS RESTRICTED.—An insured depository institution shall make no capital distribution if, after making the distribution, the institution would be undercapitalized.

"(2) MANAGEMENT FEES RESTRICTED.—An insured depository institution shall pay no management fee to any person having control of that institution if, after making the payment, the institution would be undercapitalized.

"(e) PROVISIONS APPLICABLE TO UNDERCAPITALIZED INSTITUTIONS.—

"(1) MONITORING REQUIRED.—Each appropriate Federal banking agency shall—

"(A) closely monitor the condition of any undercapitalized insured depository institution;

"(B) closely monitor compliance with capital restoration plans, restrictions, and requirements imposed under this section; and

"(C) periodically review the plan, restrictions, and requirements applicable to any undercapitalized insured depository institution to determine whether the plan, restrictions, and requirements are achieving the purpose of this section.

"(2) CAPITAL RESTORATION PLAN REQUIRED.—

"(A) IN GENERAL.—Any undercapitalized insured depository institution shall submit an acceptable capital restoration plan to the appropriate Federal banking agency within the time allowed by the agency under subparagraph (D).

"(B) CONTENTS OF PLAN.—The capital restoration plan shall—

"(i) specify—

"(I) the steps the insured depository institution will take to become adequately capitalized;

"(II) the levels of capital to be attained during each year in which the plan will be in effect;

"(III) how the institution will comply with the restrictions or requirements then in effect under this section; and

"(IV) the types and levels of activities in which the institution will engage; and

"(ii) contain such other information as the appropriate Federal banking agency may require.

"(C) CRITERIA FOR ACCEPTING PLAN.—The appropriate Federal banking agency shall not accept a capital restoration plan unless the agency determines that—

"(i) the plan—

"(I) complies with subparagraph (B);

"(II) is based on realistic assumptions, and is likely to succeed in restoring the institution's capital; and

"(III) would not appreciably increase the risk (including credit risk, interest-rate risk, and other types of risk) to which the institution is exposed; and

"(ii) if the insured depository institution is undercapitalized, each company having control of the institution has—

"(I) guaranteed that the institution will comply with the plan until the institution has been adequately capitalized on average during each of 4 consecutive calendar quarters; and

"(II) provided appropriate assurances of performance.

"(D) DEADLINES FOR SUBMISSION AND REVIEW OF PLANS.—The appropriate Federal banking agency shall by regulation establish deadlines that—

"(i) provide insured depository institutions with reasonable time to submit capital restoration plans, and generally require an institution to submit a plan not later than 30 days after the institution becomes undercapitalized; and

"(ii) require the agency to act on capital restoration plans expeditiously, and generally not later than 30 days after the plan is submitted.

"(E) GUARANTEE LIABILITY LIMITED.—

"(i) IN GENERAL.—The aggregate liability under subparagraph (C)(ii) of all companies having control of an insured depository institution shall not exceed an amount equal to 5 percent of the institution's total assets at the time the institution became undercapitalized.

"(ii) CERTAIN AFFILIATES NOT AFFECTED.—This paragraph does not require—

"(I) any company not having control of an undercapitalized insured depository institution to guarantee, or otherwise be liable on, a capital restoration plan; or

"(II) any person other than an insured depository institution to submit a capital restoration plan.

"(3) ASSET GROWTH RESTRICTED.—An undercapitalized insured depository institution shall not permit its average total assets during any calendar quarter to exceed its average total assets during the preceding calendar quarter unless—

"(A) the appropriate Federal banking agency has accepted the institution's capital restoration plan;

"(B) any increase in total assets is consistent with the plan; and

"(C) the institution's ratio of tangible equity to assets increases during the calendar quarter at a rate sufficient to enable the institution to become adequately capitalized within a reasonable time.

"(4) PRIOR APPROVAL REQUIRED FOR ACQUISITIONS, BRANCHING, AND NEW LINES OF BUSINESS.—An insured depository institution that is undercapitalized shall not, directly or indirectly, acquire any interest in any company or insured depository institution, establish or acquire any additional branch offices, or engage in any new line of business unless—

"(A) the appropriate Federal banking agency has accepted the insured depository institution's capital restoration plan, the institution is implementing the plan, and the agency determines that the proposed action is consistent with and will further the achievement of the plan; or

"(B) the Board of Directors determines, upon a vote of three-fourths of all members, that the proposed action will further the purpose of this section.

"(5) DISCRETIONARY SAFEGUARDS.—The appropriate Federal banking agency may, with respect to any undercapitalized insured depository institution, take actions described in any subparagraph of subsection (f)(2) if the agency determines that those actions are necessary to carry out the purpose of this section.

"(f) PROVISIONS APPLICABLE TO SIGNIFICANTLY UNDERCAPITALIZED INSTITUTIONS AND UNDERCAPITALIZED INSTITUTIONS THAT FAIL TO SUBMIT AND IMPLEMENT CAPITAL RESTORATION PLANS.—

"(1) IN GENERAL.—This subsection shall apply with respect to any insured depository institution that—

"(A) is significantly undercapitalized; or

"(B) is undercapitalized and—

"(i) fails to submit an acceptable capital restoration plan within the time allowed by the appropriate Federal banking agency under subsection (e)(2)(D); or

"(ii) fails in any material respect to implement a plan accepted by the agency.

"(2) SPECIFIC ACTIONS AUTHORIZED.—The appropriate Federal banking agency shall carry out this section by taking 1 or more of the following actions:

"(A) REQUIRING SALE OF SHARES OR OBLIGATIONS.—

"(i) Requiring the institution to sell enough shares or obligations of the institution so that the institution will be adequately capitalized after the sale.

"(ii) Further requiring that instruments sold under clause (i) be voting shares.

"(B) RESTRICTING TRANSACTIONS WITH AFFILIATES.—

"(i) Requiring the institution to comply with section 23A of the Federal Reserve Act as if subsection (d)(1) of that section (exempting transactions with certain affiliated institutions) did not apply.

"(ii) Further restricting the institution's transactions with affiliates.

"(C) RESTRICTING INTEREST RATES PAID.—

"(i) IN GENERAL.—Restricting the interest rates that the institution pays on deposits to the prevailing rates of interest on deposits of comparable amounts and maturities in the region where the institution is located, as determined by the agency.

"(ii) RETROACTIVE RESTRICTIONS PROHIBITED.—This subparagraph does not authorize the agency to restrict interest rates paid on time deposits made before (and not renewed or renegotiated after) the agency acted under this subparagraph.

"(D) RESTRICTING ASSET GROWTH.—Restricting the institution's asset growth more stringently than subsection (e)(3), or requiring the institution to reduce its total assets.

"(E) RESTRICTING ACTIVITIES.—Requiring the institution or any of its subsidiaries to alter, reduce, or terminate any activity that the agency determines poses excessive risk to the institution.

"(F) IMPROVING MANAGEMENT.—Doing 1 or more of the following:

"(i) NEW ELECTION OF DIRECTORS.—Ordering a new election for the institution's board of directors.

"(ii) DISMISSING DIRECTORS OR SENIOR EXECUTIVE OFFICERS.—Requiring the institution to dismiss from office any director or senior executive officer who had held office for more than 180 days immediately before the institution became undercapitalized. Dismissal under this clause shall not be construed to be a removal under section 8.

"(iii) EMPLOYING QUALIFIED SENIOR EXECUTIVE OFFICERS.—Requiring the institution to employ qualified senior executive officers (who, if the agency so specifies, shall be subject to approval by the agency).

"(G) REQUIRING CHANGE OF AUDITOR.—Requiring the institution to retain a new independent auditor.

"(H) REQUIRING PRIOR APPROVAL FOR CAPITAL DISTRIBUTIONS BY BANK HOLDING COMPANY.—Prohibiting any bank holding company having control of the insured depository institution from making any capital distribution without the prior approval of the Board of Governors of the Federal Reserve System.

"(I) Requiring divestiture.—Doing one or more of the following:

"(i) Divestiture by the institution.—Requiring the institution to divest itself of or liquidate any subsidiary if the appropriate Federal banking agency for that company determines that the subsidiary is in danger of becoming insolvent and poses a significant risk to the institution, or is likely to cause a significant dissipation of the institution's assets or earnings.

"(ii) Divestiture by parent company of nondepository affiliate.—Requiring any company that controls the institution to divest itself of or liquidate any affiliate other than an insured depository institution if the appropriate Federal banking agency for that company determines that the affiliate is in danger of becoming insolvent and poses a significant risk to the institution, or is likely to cause a significant dissipation of the institution's assets or earnings.

"(iii) Divestiture of institution.—Requiring any company that controls the institution to divest itself of the institution if the appropriate Federal banking agency for that company determines that divestiture would improve the institution's financial condition and future prospects.

"(J) Requiring other action.—Requiring the institution to take any other action that the agency determines will better carry out the purpose of this section than any of the actions described in this paragraph.

"(3) Presumption in favor of certain actions.—In complying with paragraph (2), the agency shall take the actions described in subparagraphs (A)(i) (relating to requiring the sale of shares or obligations), (B)(i) (relating to restricting transactions with affiliates), and (C) (relating to restricting interest rates) of paragraph (2), unless the agency determines that such action would not further the purpose of this section.

"(4) Senior executive officers' compensation restricted.—

"(A) In general.—The insured depository institution shall not do any of the following without the prior written approval of the appropriate Federal banking agency:

"(i) Pay any bonus to any senior executive officer.

"(ii) Provide compensation to any senior executive officer at a rate exceeding that officer's average rate of compensation (excluding bonuses, stock options, and profit-sharing) during the 12 calendar months preceding the calendar month in which the institution ceased to comply with capital standards.

"(B) Failing to submit plan.—The appropriate Federal banking agency shall not grant any approval under subparagraph (A) with respect to an institution that has failed to submit an acceptable capital restoration plan.

"(5) Discretion to impose certain additional restrictions.—The agency may impose 1 or more of the restrictions prescribed by regulation under subsection (i) if the agency determines that those restrictions are necessary to carry out the purpose of this section.

"(g) MORE STRINGENT TREATMENT BASED ON OTHER SUPERVISORY CRITERIA.—

"(1) IN GENERAL.—If the appropriate Federal banking agency determines (after notice and an opportunity for hearing) that an insured depository institution is in an unsafe or unsound condition or, pursuant to section 8(b)(8), deems the institution to be engaging in an unsafe or unsound practice, the agency may—

"(A) if the institution is well capitalized, reclassify the institution as adequately capitalized;

"(B) if the institution is adequately capitalized, require the institution to comply with 1 or more provisions of subsections (d) and (e), as if the institution were undercapitalized; or

"(C) if the institution is undercapitalized, take any action authorized under subsection (f)(2) as if the institution were significantly undercapitalized.

"(2) CONTENTS OF PLAN.—Any plan required under paragraph (1) shall specify the steps that the insured depository institution will take to correct the unsafe or unsound condition or practice. Capital restoration plans shall not be required under paragraph (1)(B).

"(h) PROVISIONS APPLICABLE TO CRITICALLY UNDERCAPITALIZED INSTITUTIONS.—

"(1) ACTIVITIES RESTRICTED.—Any critically undercapitalized insured depository institution shall comply with restrictions prescribed by the appropriate Federal banking agency under subsection (i).

"(2) PAYMENTS ON SUBORDINATED DEBT PROHIBITED.—

"(A) IN GENERAL.—A critically undercapitalized insured depository institution shall not, beginning 30 days after becoming critically undercapitalized, make any payment of principal or interest on the institution's subordinated debt.

"(B) EXCEPTIONS.—The Corporation may make exceptions to subparagraph (A) if—

"(i) the appropriate Federal banking agency has taken action with respect to the insured depository institution under paragraph (3)(A)(ii); and

"(ii) the Corporation determines that the exception would further the purpose of this section.

"(C) LIMITED EXEMPTION FOR CERTAIN SUBORDINATED DEBT.—Until July 15, 1996, subparagraph (A) shall not apply with respect to any subordinated debt outstanding on July 15, 1991, and not extended or otherwise renegotiated after July 15, 1991.

"(D) ACCRUAL OF INTEREST.—Subparagraph (A) does not prevent unpaid interest from accruing on subordinated debt under the terms of that debt, to the extent otherwise permitted by law.

"(3) CONSERVATORSHIP, RECEIVERSHIP, OR OTHER ACTION REQUIRED.—

"(A) IN GENERAL.—The appropriate Federal banking agency shall, not later than 30 days after an insured depository institution becomes critically undercapitalized—

"(i) appoint a receiver (or, with the concurrence of the Corporation, a conservator) for the institution; or

"(ii) take such other action as the agency determines, with the concurrence of the Corporation, would better achieve the purpose of this section, after documenting why the action would better achieve that purpose.

"(B) REVIEW OF OTHER ACTION.—If a conservator or receiver is not appointed for the insured depository institution, the agency shall review its action under subparagraph (A)(ii) not less often than every 90 days and determine (with the concurrence of the Corporation) whether that action better achieves the purpose of this section than the appointment of a conservator or receiver.

"(C) APPOINTMENT OF RECEIVER REQUIRED IF OTHER ACTION FAILS TO RESTORE CAPITAL.—

"(i) IN GENERAL.—Notwithstanding subparagraphs (A) and (B), the appropriate Federal banking agency shall appoint a receiver for the insured depository institution if the institution is critically undercapitalized on average during the calendar quarter beginning 270 days after the date on which the institution became critically undercapitalized.

"(ii) EXCEPTION.—Clause (i) does not require the appropriate Federal banking agency to appoint a receiver for an insured depository institution if—

"(I) on average during the calendar quarter described in clause (i), the institution has tangible equity in an amount not less than 80 percent of the level specified under subsection (c)(3)(A)(i);

"(II) the institution had significant operating earnings during that calendar quarter and the preceding calendar quarter;

"(III) the institution has made significant progress in correcting other deficiencies; and

"(IV) the Corporation determines that the appointment of a receiver would not further the purpose of this section.

"(i) RESTRICTING ACTIVITIES OF CRITICALLY UNDERCAPITALIZED INSTITUTIONS.—To carry out the purpose of this section, each appropriate Federal banking agency shall, by regulation or order—

"(1) restrict the activities of any critically undercapitalized insured depository institution; and

"(2) at a minimum, prohibit any such institution from doing any of the following without the appropriate Federal banking agency's prior written approval:

"(A) Entering into any material transaction other than in the usual course of business, including any investment, expansion, acquisition, sale of assets, or other similar action with respect to which the depository institution is required to provide notice to the appropriate Federal banking agency.

"(B) Extending credit for any highly leveraged transaction.

"(C) Amending the institution's charter or bylaws, except to the extent necessary to carry out any other requirement of any law, regulation, or order.

"(D) Making any material change in accounting methods.

"(E) Engaging in any covered transaction (as defined in section 23A(b) of the Federal Reserve Act).

"(F) Paying excessive compensation or bonuses.

"(G) Paying interest on new or renewed liabilities at a rate that would increase the institution's weighted average cost of funds.

"(j) CERTAIN GOVERNMENT-CONTROLLED INSTITUTIONS EXEMPTED.—Subsections (e) through (i) (other than paragraph (3) of subsection (e)) shall not apply—

"(1) to an insured depository institution for which the Corporation or the Resolution Trust Corporation is conservator; or

"(2) to a bridge bank, none of the voting securities of which are owned by a person or agency other than the Corporation.

"(k) REVIEW REQUIRED WHEN DEPOSIT INSURANCE FUND INCURS MATERIAL LOSS.—

"(1) IN GENERAL.—If a deposit insurance fund incurs a material loss with respect to an insured depository institution on or after July 1, 1993, the inspector general of the appropriate Federal banking agency shall—

"(A) make a written report to that agency reviewing the agency's supervision of the institution (including the agency's implementation of this section), which shall—

"(i) ascertain why the institution's problems resulted in a material loss to the deposit insurance fund; and

"(ii) make recommendations for preventing any such loss in the future; and

"(B) provide a copy of the report to—

"(i) the Comptroller General of the United States;

"(ii) the Corporation (if the agency is not the Corporation);

"(iii) in the case of a State depository institution, the appropriate State banking supervisor; and

"(iv) upon request by any Member of Congress, to that Member.

"(2) MATERIAL LOSS INCURRED.—For purposes of this subsection:

"(A) LOSS INCURRED.—A deposit insurance fund incurs a loss with respect to an insured depository institution—

"(i) if the Corporation provides any assistance under section 13(c) with respect to that institution; and—

"(I) it is not substantially certain that the assistance will be fully repaid not later than 24 months after the date on which the Corporation initiated the assistance; or

"(II) the institution ceases to repay the assistance in accordance with its terms; or

"(ii) if the Corporation is appointed receiver of the institution, and it is or becomes apparent that the present value of the deposit insurance fund's outlays with respect to that institution will exceed the present value of receivership dividends or other payments on the claims held by the Corporation.

"(B) MATERIAL LOSS.—A loss is material if it exceeds the greater of—

"(i) $25,000,000; or

"(ii) 2 percent of the institution's total assets at the time the Corporation initiated assistance under section 13(c) or was appointed receiver.

"(3) DEADLINE FOR REPORT.—The inspector general of the appropriate Federal banking agency shall comply with paragraph (1) expeditiously, and in any event (except with respect to paragraph (1)(B)(iv)) as follows:

"(A) If the institution is described in paragraph (2)(A)(i), during the 6-month period beginning on the earlier of—

"(i) the date on which the institution ceases to repay assistance under section 13(c) in accordance with its terms, or

"(ii) the date on which it becomes apparent that the assistance will not be fully repaid during the 24-month period described in paragraph (2)(A)(i).

"(B) If the institution is described in paragraph (2)(A)(ii), during the 6-month period beginning on the date on which it becomes apparent that the present value of the deposit insurance fund's outlays with respect to that institution will exceed the present value of receivership dividends or other payments on the claims held by the Corporation.

"(4) PUBLIC DISCLOSURE REQUIRED.—

"(A) IN GENERAL.—The appropriate Federal banking agency shall disclose the report upon request under section 552 of title 5, United States Code, without excising—

"(i) any portion under section 552(b)(5); or

"(ii) any information about the insured depository institution under paragraph (4) (other than trade secrets) or paragraph (8) of section 552(b).

"(B) EXCEPTION.—Subparagraph (A) does not require the agency to disclose the name of any customer of the insured depository institution (other than an institution-affiliated party), or information from which such a person's identity could reasonably be ascertained.

"(5) GAO REVIEW.—The General Accounting Office shall annually—

"(A) review reports made under paragraph (1) and recommend improvements in the supervision of insured depository institutions (including the implementation of this section); and

"(B) verify the accuracy of 1 or more of those reports.

"(6) TRANSITION RULE.—During the period beginning on July 1, 1993, and ending on June 30, 1997, a loss incurred by the Corporation with respect to an insured depository institution—

"(A) with respect to which the Corporation initiates assistance under section 13(c) during the period in question, or

"(B) for which the Corporation was appointed receiver during the period in question,

is material for purposes of this subsection only if that loss exceeds the greater of $25,000,000 or the applicable percentage of the institution's total assets at that time, set forth in the following table:

"For the following period:	The applicable percentage is:
July 1, 1993–June 30, 1994	7 percent
July 1, 1994–June 30, 1995	5 percent
July 1, 1995–June 30, 1996	4 percent
July 1, 1996–June 30, 1997	3 percent.

"(*l*) IMPLEMENTATION.—

"(1) REGULATIONS AND OTHER ACTIONS.—Each appropriate Federal banking agency shall prescribe such regulations (in consultation with the other Federal banking agencies), issue such orders, and take such other actions as are necessary to carry out this section.

"(2) WRITTEN DETERMINATION AND CONCURRENCE REQUIRED.—Any determination or concurrence by a Federal banking agency required under this section shall be written.

"(m) OTHER AUTHORITY NOT AFFECTED.—This section does not limit the authority of any Federal banking agency or a State to take action in addition to (but not in derogation of) that required under this section.

"(n) JUDICIAL REVIEW.—

"(1) JURISDICTION AND VENUE.—

"(A) FILING OF PETITION.—A person aggrieved by an action of an appropriate Federal banking agency under this section may obtain review of that action by filing, not later than 10 days after receiving notice of the agency action, a written petition requesting that the action be modified, terminated, or set aside.

"(B) PLACE FOR FILING.—A petition filed pursuant to this subsection shall be filed in the United States Court of Appeals for the District of Columbia Circuit or the United States court of appeals for the circuit containing the home office of the insured depository institution whose condition is the basis for the agency action.

"(2) PERSON AGGRIEVED DEFINED.—For purposes of this subsection, a 'person aggrieved' by the action of an appropriate Federal banking agency under this section—

"(A) in the case of an action taken under this section with respect to an insured depository institution or company having control of such an institution, means the institution or company and any company having control of that institution or company; and

"(B) in the case of an order under this section requiring an insured depository institution to dismiss a director or senior executive officer, includes the person dismissed.

"(3) SCOPE OF REVIEW.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), action taken by an appropriate Federal banking agency under this section shall be modified, terminated, or set aside only if the court finds on the record on which the agency acted that the agency's action was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

"(B) ALTERNATIVE REVIEW OF CERTAIN AGENCY ACTIONS.—This subsection does not prohibit a person aggrieved by an order of an appropriate Federal banking agency appointing a conservator or receiver for an insured depository institution from pursuing any judicial review of the order that is otherwise available.

"(4) EXPEDITED REVIEW REQUIRED.—The United States courts of appeals shall expedite the review of petitions complaining of agency action under this section.

"(5) INJUNCTIVE RELIEF NOT AVAILABLE.—The commencement of proceedings for judicial review under this subsection shall not operate as a stay of any action taken by the appropriate Federal banking agency. No court shall have jurisdiction to stay, enjoin, or otherwise delay agency action taken under this section.

"(6) JURISDICTION WITHDRAWN.—Except as provided in this subsection, no court shall have jurisdiction over action taken by an appropriate Federal banking agency under this section.

"(o) TRANSITION RULES FOR SAVINGS ASSOCIATIONS.—

"(1) RTC'S ROLE DOES NOT DIMINISH CARE REQUIRED OF OTS.—

"(A) IN GENERAL.—In implementing this section, the appropriate Federal banking agency (and, to the extent applicable, the Corporation) shall exercise the same care as if the Savings Association Insurance Fund (rather than the Resolution Trust Corporation) bore the cost of resolving the problems of insured savings associations described in clauses (i) and (ii)(II) of section 21A(b)(3)(A) of the Federal Home Loan Bank Act.

"(B) REPORTS.—Subparagraph (A) does not require reports under subsection (k).

"(2) NEW CAPITAL PLAN NOT REQUIRED FOR CERTAIN SAVINGS ASSOCIATIONS.—Subsections (e)(2) and (f) shall not apply before July 1, 1994, to any insured savings association if—

"(A) before the date of enactment of the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991—

"(i) the savings association had submitted a plan meeting the requirements of section 5(t)(6)(A)(ii) of the Home Owners' Loan Act; and

"(ii) the Director of the Office of Thrift Supervision had accepted the plan;

"(B) the plan remains in effect; and

"(C) the savings association remains in compliance with the plan.".

(b) Deadline for Regulations.—Each appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) shall, after notice and opportunity for comment, promulgate final regulations under section 37 of the Federal Deposit Insurance Act (as added by subsection (a)) not later than 240 days after the date of enactment of this Act, and those regulations shall become effective not later than 270 days after that date of enactment.

(c) Other Amendments to the Federal Deposit Insurance Act.—

(1) Enforcement action based on unsatisfactory asset quality, management, earnings, or liquidity.—Section 8(b) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)) is amended by redesignating paragraph (8) as paragraph (9) and inserting after paragraph (7) the following:

"(8) Unsatisfactory asset quality, management, earnings, or liquidity as unsafe or unsound practice.—If an insured depository institution receives, in its most recent report of examination, a less-than-satisfactory rating for asset quality, management, earnings, or liquidity, the appropriate Federal banking agency may (if the deficiency is not corrected) deem the institution to be engaging in an unsafe or unsound practice for purposes of this subsection.".

(2) Conforming amendments relating to Federal banking agencies' enforcement authority.—Section 8(i) of the Federal Deposit Insurance Act (12 U.S.C. 1818(i)) is amended—

(A) in the first sentence of paragraph (1), by inserting "or under section 37" after "section"; and

(B) in paragraph (2)(A)(ii), by inserting ", or final order under section 37" after "section".

(d) Conforming Amendment to Section 5(t)(7) of the Home Owners' Loan Act.—Section 5(t)(7) of the Home Owners' Loan Act (12 U.S.C. 1464(t)(7)) is amended—

(1) in subsection (A), by inserting "under this Act" before the period; and

(2) in subsection (B), by inserting "under this Act" after "imposed by the Director".

(e) Transition Rule Regarding Current Directors and Senior Executive Officers.—

(1) Dismissal from office.—Section 37(f)(2)(F)(ii) of the Federal Deposit Insurance Act (as added by subsection (a)) shall not apply with respect to—

(A) any director whose current term as a director commenced on or before the date of enactment of this Act and has not been extended—

(i) after that date of enactment, or

(ii) to evade section 37(f)(2)(F)(ii); or

(B) any senior executive officer who accepted employment in his or her current position on or before the date of enactment of this Act and whose contract of employment has not been renewed or renegotiated—

(i) after that date of enactment, or

(ii) to evade section 37(f)(2)(F)(ii).

(2) RESTRICTING COMPENSATION.—Section 37(f)(4) of the Federal Deposit Insurance Act (as added by subsection (a)) shall not apply with respect to any senior executive officer who accepted employment in his or her current position on or before the date of enactment of this Act and whose contract of employment has not been renewed or renegotiated—

(A) after that date of enactment, or

(B) to evade section 37(f)(4).

(f) EFFECTIVE DATE.—The amendments made by this section shall become effective 270 days after the date of enactment of this Act.

SEC. 206. STANDARDS FOR SAFETY AND SOUNDNESS.

(a) IN GENERAL.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following new section:

"SEC. 38. STANDARDS FOR SAFETY AND SOUNDNESS.

"(a) OPERATIONAL AND MANAGERIAL STANDARDS.—Each appropriate Federal banking agency shall, for all insured depository institutions and depository institution holding companies, prescribe—

"(1) standards relating to—

"(A) internal controls, information systems, and internal audit systems, in accordance with section 36;

"(B) loan documentation;

"(C) credit underwriting;

"(D) interest rate exposure; and

"(E) asset growth; and

"(2) such other operational and managerial standards as the agency determines to be appropriate.

"(b) ASSET QUALITY, EARNINGS, AND STOCK VALUATION STANDARDS.—Each appropriate Federal banking agency shall, for all insured depository institutions and depository institution holding companies, prescribe—

"(1) standards specifying—

"(A) a maximum ratio of classified assets to capital;

"(B) minimum earnings sufficient to absorb losses without impairing capital; and

"(C) a minimum ratio of market value to book value for publicly traded shares of the institution or company; and

"(2) such other standards relating to asset quality, earnings, and valuation as the agency determines to be appropriate.

"(c) STANDARDS TO BE PRESCRIBED BY REGULATION.—Standards under subsections (a) and (b) shall be prescribed by regulation.

"(d) FAILURE TO MEET STANDARDS.—

"(1) PLAN REQUIRED.—

"(A) IN GENERAL.—If the appropriate Federal banking agency determines that an insured depository institution or depository institution holding company fails to meet any standard prescribed under subsection (a) or (b), the agency shall require the institution or company to submit an acceptable plan to the agency within the time allowed by the agency under subparagraph (C).

"(B) CONTENTS OF PLAN.—Any plan required under subparagraph (A) shall specify the steps that the institution or company will take to correct the deficiency. If the institution is undercapitalized, the plan may be part of a capital restoration plan.

"(C) DEADLINES FOR SUBMISSION AND REVIEW OF PLANS.—The appropriate Federal banking agency shall by regulation establish deadlines that—

"(i) provide institutions and companies with reasonable time to submit plans required under subparagraph (A), and generally require the institution or company to submit a plan not later than 30 days after the agency determines that the institution or company fails to meet any standard prescribed under subsection (a) or (b); and

"(ii) require the agency to act on plans expeditiously, and generally not later than 30 days after the plan is submitted.

"(2) ORDER REQUIRED IF INSTITUTION FAILS TO SUBMIT OR IMPLEMENT PLAN.—If an insured depository institution or depository institution holding company fails to submit an acceptable plan within the time allowed under paragraph (1)(C), or fails in any material respect to implement a plan accepted by the appropriate Federal banking agency, the agency, by order—

"(A) shall require the institution or company to correct the deficiency; and

"(B) may do 1 or more of the following until the deficiency has been corrected:

"(i) Prohibit the institution or company from permitting its average total assets during any calendar quarter to exceed its average total assets during the preceding calendar quarter, or restrict the rate at which the average total assets of the institution or company may increase from one calendar quarter to another.

"(ii) Require the institution or company to increase its ratio of tangible equity to assets.

"(iii) Take the action described in section 37(f)(2)(C).

"(iv) Require the institution to take any other action that the agency determines will better carry out the purpose of section 37 than any of the actions described in this subparagraph.

"(3) RESTRICTIONS MANDATORY FOR CERTAIN INSTITUTIONS.—In complying with paragraph (2), the appropriate Federal banking agency shall take 1 or more of the actions described in clauses (i) through (iii) of paragraph (2)(B) if—

"(A) the agency determines that the insured depository institution fails to meet any standard prescribed under subsection (a)(1) or (b)(1);

"(B) the institution has not corrected the deficiency; and

"(C) either—

"(i) during the 24-month period before the date on which the institution first failed to meet the standard—

"(I) the institution commenced operations; or

"(II) 1 or more persons acquired control of the institution; or "(ii) during the 18-month period before the date on which the institution first failed to meet the standard, the institution underwent extraordinary growth, as defined by the agency.

"(e) DEFINITIONS.—For purposes of this section, the terms 'average' and 'capital restoration plan' have the same meanings as in section 37.

"(f) OTHER AUTHORITY NOT AFFECTED.—The authority granted by this section is in addition to any other authority of the Federal banking agencies.".

(b) REGULATIONS REQUIRED.—Each appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act) shall promulgate final regulations under section 38 of the Federal Deposit Insurance Act (as added by subsection (a) of this section) not later than March 1, 1993.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective on the earlier of—

(1) the date on which final regulations promulgated in accordance with subsection (b) become effective; or

(2) July 1, 1993.

SEC. 207. CONSERVATORSHIP AND RECEIVERSHIP AMENDMENTS TO FACILITATE PROMPT CORRECTIVE ACTION.

(a) ADDITIONAL GROUNDS FOR APPOINTING CONSERVATOR OR RECEIVER; CONSISTENT STANDARDS FOR NATIONAL, STATE MEMBER, AND STATE NONMEMBER BANKS.—Section 11(c)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1821(c)(5)) is amended to read as follows:

"(5) GROUNDS FOR APPOINTING CONSERVATOR OR RECEIVER.— The grounds for appointing a conservator or receiver (which may be the Corporation) for any insured depository institution are as follows:

"(A) The institution's assets are less than the institution's obligations to its creditors and others, including members of the institution.

"(B) Substantial dissipation of assets or earnings due to—

"(i) any violation of any law or regulation; or

"(ii) any unsafe or unsound practice.

"(C) An unsafe or unsound condition to transact business.

"(D) Any willful violation of a cease-and-desist order which has become final.

"(E) Any concealment of the institution's books, papers, records, or assets, or any refusal to submit the institution's books, papers, records, or affairs for inspection to any examiner or to any lawful agent of the appropriate Federal banking agency or State bank or savings association supervisor.

"(F) The institution is likely to be unable to pay its obligations or meet its depositors' demands in the normal course of business.

"(G) The institution has incurred or is likely to incur losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for replenishment of the institution's capital without Federal assistance.

"(H) Any violation of any law or regulation, or any unsafe or unsound practice or condition that is likely to cause insolvency or substantial dissipation of assets or earnings, or is likely to weaken the institution's condition or otherwise seriously prejudice the interests of the institution's depositors.

"(I) The institution, by resolution of its board of directors or its members, consents to the appointment.

"(J) The institution ceases to be an insured institution.

"(K) The institution is undercapitalized (as defined in section 37(b)), and—

"(i) has no reasonable prospect of becoming adequately capitalized (as defined in that section);

"(ii) fails to become adequately capitalized when required to do so under section 37(f)(2)(A);

"(iii) fails to submit a capital restoration plan acceptable to that agency within the time prescribed under section 37(e)(2)(D); or

"(iv) materially fails to implement a capital restoration plan submitted and accepted under section 37(e)(2).

"(L) The institution—

"(i) is critically undercapitalized, as defined in section 37(b); or

"(ii) otherwise has substantially insufficient capital.".

(b) CONFORMING AMENDMENT TO AUTHORITY TO APPOINT RECEIVER FOR NATIONAL BANK.—Section 1 of the Act of June 30, 1876 (12 U.S.C. 191) is amended to read as follows:

"SECTION 1. The Comptroller of the Currency may, without prior notice or hearings, appoint the Federal Deposit Insurance Corporation as receiver for any national banking association if the Comptroller determines, in the Comptroller's discretion, that—

"(1) 1 or more of the grounds specified in section 11(c)(5) of the Federal Deposit Insurance Act exist; or

"(2) the association's board of directors consists of fewer than 5 members.".

(c) CONFORMING AMENDMENT TO THE BANK CONSERVATION ACT.—Section 203(a) of the Bank Conservation Act (12 U.S.C. 203(a)) is amended to read as follows:

"(a) APPOINTMENT.—The Comptroller of the Currency may, without prior notice or hearings, appoint a conservator (which may be the Federal Deposit Insurance Corporation) to the possession and control of a bank whenever the Comptroller of the Currency determines that 1 or more of the grounds specified in section 11(c)(5) of the Federal Deposit Insurance Act exist.".

(d) CONFORMING AMENDMENTS TO THE HOME OWNERS' LOAN ACT.—Section 5(d)(2) of the Home Owners' Loan Act (12 U.S.C. 1464(d)(2)) is amended—

(1) by striking subparagraphs (A) through (D) and inserting the following:

"(A) GROUNDS FOR APPOINTING CONSERVATOR OR RECEIVER FOR INSURED SAVINGS ASSOCIATION.—The Director of the Office of Thrift Supervision may appoint a conservator or receiver for any insured savings association if the Director determines, in the Director's discretion, that 1 or more of the grounds specified in section 11(c)(5) of the Federal Deposit Insurance Act exists"; and

(2) by redesignating subparagraphs (E) through (I) as subparagraphs (B) through (F), respectively.

(e) ADDITIONAL PROVISIONS RELATING TO APPOINTMENT OF CONSERVATOR OR RECEIVER.—Section 11(c)(9) of the Federal Deposit Insurance Act (12 U.S.C. 1821(c)(9)) (as amended by subsection (a)) is amended to read as follows:

"(9) APPROPRIATE FEDERAL BANKING AGENCY MAY APPOINT CORPORATION AS CONSERVATOR OR RECEIVER FOR INSURED STATE DEPOSITORY INSTITUTION TO CARRY OUT SECTION 37.—

"(A) IN GENERAL.—The appropriate Federal banking agency may appoint the Corporation as sole receiver (or, subject to paragraph (11), sole conservator) of any insured State depository institution, after consultation with the appropriate State supervisor, if the appropriate Federal banking agency determines that—

"(i) 1 or more of the grounds specified in subparagraphs (K) and (L) of paragraph (5) exist with respect to that institution; and

"(ii) the appointment is necessary to carry out the purpose of section 37.

"(B) NONDELEGATION.—The appropriate Federal banking agency shall not delegate any action under subparagraph (A).

"(10) CORPORATION MAY APPOINT ITSELF AS CONSERVATOR OR RECEIVER FOR INSURED DEPOSITORY INSTITUTION TO PREVENT LOSS TO DEPOSIT INSURANCE FUND.—The Board of Directors may appoint the Corporation as sole conservator or receiver of an insured depository institution, after consultation with the appropriate Federal banking agency and the appropriate State supervisor (if any), if the Board of Directors determines that—

"(A) 1 or more of the grounds specified in any subparagraph of paragraph (5) exist with respect to the institution; and

"(B) the appointment is necessary to reduce—

"(i) the risk that the affected deposit insurance fund would incur a loss with respect to the insured depository institution, or

"(ii) any loss that the affected deposit insurance fund is expected to incur with respect to that institution.

"(11) APPROPRIATE FEDERAL BANKING AGENCY SHALL NOT APPOINT CONSERVATOR UNDER CERTAIN PROVISIONS WITHOUT GIVING CORPORATION OPPORTUNITY TO APPOINT RECEIVER.—The appropriate Federal banking agency shall not appoint a conservator for an insured depository institution under subparagraph (K) or (L) of paragraph (5) without the Corporation's consent unless the agency has given the Corporation 48 hours notice of the agency's intention to appoint the conservator and the grounds for the appointment.

"(12) DIRECTORS NOT LIABLE FOR ACQUIESCING IN APPOINTMENT OF CONSERVATOR OR RECEIVER.—The members of the board of directors of an insured depository institution shall not be liable to the institution's shareholders or creditors for acquiescing in or consenting in good faith to the appointment of the Corporation or Resolution Trust Corporation as conservator or receiver for that institution.

"(13) ADDITIONAL POWERS.—In any case in which the Corporation is appointed conservator or receiver under paragraph (4), (6), (9), or (10) for any insured State depository institution—

"(A) subject to subparagraph (B), this section shall apply to the Corporation as conservator or receiver in the same manner and to the same extent as if that institution were a Federal depository institution for which the Corporation had been appointed conservator or receiver;

"(B) the Corporation shall apply the law of the State in which the institution is chartered insofar as that law gives the claims of depositors priority over those of other creditors or claimants; and

"(C) the Corporation as receiver of the institution may—

"(i) liquidate the institution in an orderly manner; and

"(ii) make any other disposition of any matter concerning the institution, as the Corporation determines is in the best interests of the institution, the depositors of the institution, and the Corporation.".

(f) CONFORMING AMENDMENT TO THE FEDERAL RESERVE ACT.—Section 11 of the Federal Reserve Act (12 U.S.C. 248) is amended by adding at the end the following new subsection:

"(p) AUTHORITY TO APPOINT CONSERVATOR OR RECEIVER.—The Board may appoint the Federal Deposit Insurance Corporation as conservator or receiver for a State member bank under section 11(c)(9) of the Federal Deposit Insurance Act.".

(g) EFFECTIVE DATE.—The amendments made by this section shall become effective 270 days after the date of enactment of this Act.

SEC. 208. BACKUP ENFORCEMENT AUTHORITY OF FDIC.

Section 8(t) of the Federal Deposit Insurance Act (12 U.S.C. 1818(t)) is amended to read as follows:

"(t) AUTHORITY OF FDIC TO TAKE ENFORCEMENT ACTION AGAINST INSURED DEPOSITORY INSTITUTIONS AND INSTITUTION-AFFILIATED PARTIES.—

"(1) RECOMMENDING ACTION BY APPROPRIATE FEDERAL BANKING AGENCY.—The Corporation, based on an examination of an insured depository institution by the Corporation or by the appropriate Federal banking agency or on other information, may recommend in writing to the appropriate Federal banking agency that the agency take any enforcement action authorized under section 7(j), this section, or section 18(j) with respect to any insured depository institution or any institution-affiliated party. The recommendation shall be accompanied by an explanation of the concerns giving rise to the recommendation.

"(2) FDIC's AUTHORITY TO ACT IF APPROPRIATE FEDERAL BANKING AGENCY FAILS TO FOLLOW RECOMMENDATION.—If the appropriate Federal banking agency does not, before the end of the 60-day period beginning on the date on which the agency receives the recommendation under paragraph (1), take the enforcement action recommended by the Corporation or provide a plan acceptable to the Corporation for responding to the Corporation's concerns, the Corporation may take the recommended enforcement action if the Board of Directors determines, upon a vote of its members, that—

"(A) the insured depository institution is in an unsafe or unsound condition;

"(B) the institution is engaging in unsafe or unsound practices, and the recommended enforcement action will prevent the institution from continuing such practices; or

"(C) the institution's conduct or threatened conduct (including any acts or omissions) poses a risk to the deposit insurance fund, or may prejudice the interests of the institution's depositors.

"(3) EFFECT OF EXIGENT CIRCUMSTANCES.—

"(A) AUTHORITY TO ACT.—The Corporation may, upon a vote of the Board of Directors, and after notice to the appropriate Federal banking agency, exercise its authority under paragraph (2) in exigent circumstances without regard to the time period set forth in paragraph (2).

"(B) AGREEMENT ON EXIGENT CIRCUMSTANCES.—The Corporation shall, by agreement with the appropriate Federal banking agency, set forth those exigent circumstances in which the Corporation may act under subparagraph (A).

"(4) CORPORATION'S POWERS; INSTITUTION'S DUTIES.—For purposes of this subsection—

"(A) the Corporation shall have the same powers with respect to any insured depository institution and its affiliates as the appropriate Federal banking agency has with respect to the institution and its affiliates; and

"(B) the institution and its affiliates shall have the same duties and obligations with respect to the Corporation as the institution and its affiliates have with respect to the appropriate Federal banking agency.

"(5) REQUESTS FOR FORMAL ACTIONS AND INVESTIGATIONS.—

"(A) SUBMISSION OF REQUESTS.—A regional office of a Federal banking agency (including a Federal Reserve bank) that requests a formal investigation of or civil enforcement action against an insured depository institution shall submit the request concurrently to the chief officer of the appropriate Federal banking agency and to the Corporation.

"(B) AGENCIES REQUIRED TO REPORT ON REQUESTS.—Each Federal banking agency shall report semiannually to the Corporation on the status or disposition of all requests under subparagraph (A), including the reasons for any decision by the agency to approve or deny such requests.".

SEC. 209. CAPITAL MAINTENANCE COMMITMENTS.

Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following new subsection:

"(q) COMMITMENTS TO MAINTAIN THE CAPITAL OF INSURED DEPOSITORY INSTITUTIONS.—

"(1) IN GENERAL.—Any commitment made to a Federal banking agency to maintain the capital of an insured depository institution may be enforced under this Act.

"(2) OTHER AUTHORITY NOT AFFECTED.—The authority granted by paragraph (1) is in addition to any other authority of the Federal banking agencies.".

SEC. 210. PASS-THROUGH INSURANCE COVERAGE.

(a) RESTRICTING CERTAIN PASS-THROUGH INSURANCE COVERAGE.—Section 3(m) of the Federal Deposit Insurance Act (12 U.S.C. 1813(m)) is amended—

(1) by striking "(m)(1)" and inserting the following:

"(m) INSURED DEPOSIT.—

"(1) IN GENERAL.—";

(2) in paragraph (1), by striking "except trust funds which shall be insured as provided in subsection (i) of section 7 of this Act";

(3) in the last sentence of paragraph (1), by striking "and subsection (i) of section 7 of this Act"; and

(4) in paragraph (2), by inserting "DEPOSIT IN BRANCH OF FOREIGN BANK.—" after "(2)".

(b) INSURANCE OF DEPOSITS.—Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended—

(1) by amending subsection (a)(1) to read as follows:

"(a) INSURANCE OF DEPOSITS.—

"(1) IN GENERAL.—

"(A) DEPOSITS INSURED.—The Corporation shall insure the deposits in all insured depository institutions as provided in this Act.

"(B) AMOUNT INSURED.—The net amount of any depositor's insured deposits at any insured depository institution shall be $100,000."; and

(2) in subsection (a), by adding at the end the following new paragraphs:

"(8) PASS-THROUGH INSURANCE RESTRICTED TO INTERESTS IN TAX-QUALIFIED RETIREMENT PLANS AND CERTAIN IRREVOCABLE TRUSTS.—

"(A) IN GENERAL.—Deposits may not be insured on a pro rata or pass-through basis except that—

"(i) in the case of a plan meeting the requirements of section 401(a) or 403(b)(9) of the Internal Revenue Code of 1986 that includes a trust exempt from tax under section 501(a) of that Code and that was eligible to receive pro rata or pass-through insurance coverage as of July 15, 1991, or a plan meeting the requirements of section 457 of that Code that was eligible to receive such coverage as of July 15, 1991, deposits may be insured on a pass-through basis with respect to each participant in the plan in an amount equal to the lesser of the present value of the vested accrued benefit of such individual participant or $100,000, unless such deposit arises under a contract between an insured depository institution and an employee benefit plan, and the contract expressly permits benefit-responsive withdrawals or transfers;

"(ii) in the case of deposits of an irrevocable trust established pursuant to a statute or written trust agreement (other than a tax-qualified retirement plan or irrevocable trust described in clause (i)), the deposits may be insured on a pass through basis with respect to each known beneficiary of the trust whose interest is noncontingent in an amount not to exceed the lesser of the present value of the beneficiary's noncontingent interest or $100,000;

"(iii) in the case of a custodial account held on deposit in an insured depository institution if—

"(I) the principal or beneficiary does not control where the funds are deposited;

"(II) the account is not maintained for investment purposes; and

"(III) the account is not maintained principally for the purpose of increasing insurance coverage,

the custodial funds shall be insured in an amount not to exceed $100,000 for each principal or beneficiary represented; and

"(iv) in the case of a custodial account maintained by a deposit broker at an insured depository institution, the custodial funds shall be insured in an amount not to exceed $100,000 for each principal or beneficiary represented in each capacity in which the principal or beneficiary places the deposit through the deposit broker.

"(B) SPECIAL RULES.—For purposes of this section—

"(i) amounts described in clauses (i), (iii), and (iv) of subparagraph (A) shall not be taken into account in determining the net amount due any participant, principal, or beneficiary, as appropriate, but

"(ii) amounts described in subparagraph (A)(ii) shall be taken into account in determining the net amount due any beneficiary.

"(C) DEFINITIONS.—For purposes of this paragraph—

"(i) BENEFIT-RESPONSIVE WITHDRAWALS OR TRANSFERS.— The term 'benefit responsive withdrawal or transfer' means any withdrawal or transfer of funds deposited at an insured depository institution that—

"(I) occurs during a period for which the institution has guaranteed by contract to pay the plan 1 or more rates of interest; and

"(II) is made to pay benefits provided by an employee benefit plan or to permit a plan participant or beneficiary to redirect the investment of his or her account balance without substantial penalty or adjustment.

"(ii) EMPLOYEE BENEFIT PLAN.—The term 'employee benefit plan' has the same meaning as in section 3(3) of the Employee Retirement Income Security Act of 1974 and includes any plan described in section 401(d) of the Internal Revenue Code of 1986.

"(9) RESTRICTIONS ON PASS-THROUGH INSURANCE FOR DEPOSITS OF TRUSTS.—Notwithstanding paragraph (8)(A)(ii), deposits described in that paragraph may not be insured on a pro rata or pass-through basis—

"(A) if the trustee or an organizer of the trust solicits persons to transfer funds into the trust;

"(B) if interests in the trust are sold to beneficiaries;

"(C) if there are more than 10 settlors or grantors of the trust; or

"(D) in such other circumstances as the Board of Directors may prescribe.".

(c) CONFORMING AMENDMENT.—Section 7(i) of the Federal Deposit Insurance Act (12 U.S.C. 1817(i)) is amended to read as follows:

"(i) [Reserved].".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1993, except that such amendments shall not apply to any specific time deposit made before July 15, 1991, until the stated maturity of the time deposit.

SEC. 211. BROKERED DEPOSITS.

(a) IN GENERAL.—Section 29 of the Federal Deposit Insurance Act (12 U.S.C. 1831f) is amended—

(1) in subsection (a), by striking "troubled institution" and inserting "insured depository institution that is not well capitalized and does not have a CAMEL rating of 1 or 2";

(2) in subsection (c)—

(A) by inserting "which is adequately capitalized and has a CAMEL rating of 1 or 2" after "insured depository institution"; and

(B) by adding at the end "Any waiver granted under this subsection shall be effective for not more than 90 days. Any application for renewal of the waiver for an additional 90-day period shall be deemed to be granted unless the Corporation denies the application not more than 15 days after receiving the application.";

(3) in subsection (d), by striking all after "unsound practice;" and inserting the following:

"(2) is necessary to enable the institution to meet the demands of its depositors or pay its obligations in the ordinary course of business; and

"(3) is consistent with the conservator's fiduciary duty to minimize the institution's losses.

Effective 90 days after the date on which the institution was placed in conservatorship, the institution may not accept such deposits.";

(4) by redesignating subsections (e) through (g) as subsections (f) through (h), respectively, and inserting after subsection (d) the following:

"(e) RESTRICTION ON INTEREST RATE PAID.—Any insured depository institution which, under subsection (c) or (d), accepts funds obtained, directly or indirectly, by or through a deposit broker, may not pay a rate of interest on such funds which, at the time that such funds are accepted, significantly exceeds—

"(1) the rate paid on deposits of similar maturity in such institution's normal market area for deposits accepted in the institution's normal market area; or

"(2) the national rate paid on deposits of comparable maturity, as established by the Corporation, for deposits accepted outside the institution's normal market area.";

(5) in subsection (f), as redesignated, by striking "troubled"; and

(6) by striking subsection (h), as redesignated.

(b) NOTIFICATION AND RECORDKEEPING.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting after section 29 the following:

"SEC. 29A. DEPOSIT BROKER NOTIFICATION AND RECORDKEEPING.

"(a) NOTIFICATION.—

"(1) IN GENERAL.—A deposit broker, as defined in section 29(g), shall not solicit or place any deposit with an insured depository institution, unless such deposit broker has provided the Corporation with written notice that it is a deposit broker.

"(2) TERMINATION OF DEPOSIT BROKER STATUS.—When a deposit broker referred to in paragraph (1) ceases to act as a deposit broker it shall provide the Corporation with a written notice that it is no longer acting as a deposit broker.

"(3) FORM AND CONTENT.—The notices required by paragraphs (1) and (2) shall be in such form and contain such information concerning the deposit solicitation and placement activities of a deposit broker as the Corporation may prescribe as necessary or appropriate to carry out the purposes of this subsection.

"(b) RECORDS.—The Corporation may prescribe regulations requiring each deposit broker that has filed a notice under subsection (a)(1) to maintain separate records relating to the total amounts and maturities of the deposits placed by such broker for each insured depository institution during specified time periods. Such regulations shall specify the format in which and the period for which such records shall be preserved, as well as the time period within which the deposit broker shall furnish to the Corporation copies of such records (or designated portions thereof) as the Corporation may request.

"(c) PERIODIC REPORTS.—

"(1) IN GENERAL.—The Corporation may prescribe regulations requiring each deposit broker that has filed a notice under subsection (a)(1) to file with the Corporation separate quarterly reports relating to the total amounts and maturities of the deposits placed by such broker for each depository institution during the applicable quarter. Such regulations shall specify the form and content of such reports, as well as the applicable reporting period.

"(2) DESIGNATED AGENT.—The Corporation may designate another entity as its agent for the purpose of receiving and maintaining reports under this subsection. If the Corporation designates such an agent the Corporation may, through its agent, prescribe and collect an appropriate quarterly fee from each deposit broker that filed reports with the agent during the applicable quarter, in an amount sufficient to defray the Corporation's cost of retaining the agent and to reflect the proportionate amount of the deposits placed with insured depository institutions by each broker during the applicable quarter.".

(c) DEPOSIT SOLICITATION RESTRICTED.—Section 29 of the Federal Deposit Insurance Act (12 U.S.C. 1831f) is amended by adding at the end the following:

"(h) DEPOSIT SOLICITATION RESTRICTED.—An insured depository institution that is undercapitalized, as defined in section 37, shall not solicit deposits by offering rates of interest that are significantly higher than the prevailing rates of interest on insured deposits—

"(1) in such institution's normal market areas; or

"(2) in the market area in which such deposits would otherwise be accepted.".

(d) DEADLINE FOR REGULATIONS.—The Corporation shall promulgate final regulations to carry out the amendments made under subsections (a), (b), and (c) not later than 150 days after the date of enactment of this Act, and those regulations shall become effective not later than 180 days after that date of enactment, except that such regulations shall not apply to any specific time deposit made before July 15, 1991, until the stated maturity of the time deposit.

SEC. 212. RISK-BASED ASSESSMENTS.

(a) RISK-BASED ASSESSMENT SYSTEM.—Section 7(b) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)), as amended by section 102, is amended to read as follows:

"(b) ASSESSMENTS.—

"(1) RISK-BASED ASSESSMENT SYSTEM.—

"(A) RISK-BASED ASSESSMENT SYSTEM REQUIRED.—The Board of Directors shall, by regulation, establish a risk-based assessment system for insured depository institutions.

"(B) PRIVATE REINSURANCE AUTHORIZED.—In carrying out this paragraph, the Corporation may—

"(i) obtain private reinsurance covering not more than 10 percent of any loss the Corporation incurs with respect to an insured depository institution; and

"(ii) base that institution's semiannual assessment (in whole or in part) on the cost of the reinsurance.

"(C) RISK-BASED ASSESSMENT SYSTEM DEFINED.—For purposes of this paragraph, the term 'risk-based assessment system' means a system for calculating a depository institution's semiannual assessment based on—

"(i) the probability that the deposit insurance fund will incur a loss with respect to the institution, taking into consideration the risks attributable to—

"(I) different categories and concentrations of assets;

"(II) different categories and concentrations of liabilities, both insured and uninsured, contingent and noncontingent; and

"(III) any other factors the Corporation determines are relevant to assessing such probability;

"(ii) the likely amount of any such loss; and

"(iii) the revenue needs of the deposit insurance fund.

"(D) SEPARATE ASSESSMENT SYSTEMS.—The Board of Directors may establish separate risk-based assessment systems for large and small members of each deposit insurance fund.

"(E) FOREIGN DEPOSITS.—In carrying out this paragraph, the Corporation shall take into account the special assessment procedure for foreign deposits under paragraph (6).

"(2) SETTING ASSESSMENTS.—

"(A) ACHIEVING AND MAINTAINING DESIGNATED RESERVE RATIO.—

"(i) IN GENERAL.—The Board of Directors shall set semiannual assessments for insured depository institutions—

"(I) to maintain the reserve ratio of each deposit insurance fund at the designated reserve ratio; or

"(II) if the reserve ratio is less than the designated reserve ratio, to increase the reserve ratio to the designated reserve ratio as provided in paragraph (3).

"(ii) FACTORS TO BE CONSIDERED.—In carrying out clause (i), the Board of Directors shall consider the deposit insurance fund's—

"(I) expected operating expenses,

"(II) case resolution expenditures and income,

"(III) the effect of assessments on members' earnings and capital, and

"(IV) any other factors that the Board of Directors may deem appropriate.

"(iii) MINIMUM ASSESSMENT.—The semiannual assessment for each member of a deposit insurance fund shall be not less than $1,000.

"(iv) DESIGNATED RESERVE RATIO DEFINED.—The designated reserve ratio of each deposit insurance fund for each year shall be—

"(I) 1.25 percent of estimated insured deposits; or

"(II) a higher percentage of estimated insured deposits that the Board of Directors determines to be justified for that year by circumstances raising a significant risk of substantial future losses to the fund.

"(B) INDEPENDENT TREATMENT OF FUNDS.—The Board of Directors shall—

"(i) set semiannual assessments for members of each deposit insurance fund independently from semiannual assessments for members of any other deposit insurance fund; and "(ii) set the designated reserve ratio of each deposit insurance fund independently from the designated reserve ratio of any other deposit insurance fund.

"(C) NOTICE OF ASSESSMENTS.—The Corporation shall notify each insured depository institution of that institution's semiannual assessment not less than 60 days before the beginning of each semiannual period.

"(D) PRIORITY OF FINANCING CORPORATION AND FUNDING CORPORATION ASSESSMENTS.—Notwithstanding any other provision of this paragraph, amounts assessed by the Financing Corporation and the Resolution Funding Corporation under sections 21 and 21B of the Federal Home Loan Bank Act, respectively, against Savings Association Insurance Fund members, shall be subtracted from the amounts authorized to be assessed by the Corporation under this paragraph.

"(E) MINIMUM ASSESSMENTS.—The Corporation shall design the risk-based assessment system for any deposit insurance fund so that, if the Corporation has borrowings outstanding under section 14 on behalf of that fund or the reserve ratio of that fund remains below the designated reserve ratio, the total amount raised by semiannual assessments on members of that fund shall be not less than the total amount that would have been raised if—

"(i) section 7(b) as in effect on July 15, 1991 remained in effect; and

"(ii) the assessment rate in effect on July 15, 1991 remained in effect.

"(F) TRANSITION RULE FOR SAVINGS ASSOCIATION INSURANCE FUND.—With respect to the Savings Association Insurance Fund, during the period beginning on the effective date of the amendments made by section 212(a) of the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991 and ending on December 31, 1997—

"(i) subparagraph (A)(i)(II) shall apply with 'as provided in paragraph (3)' omitted; and

"(ii) subparagraph (E) shall apply with 'if section 7(b) as in effect on July 15, 1991 remained in effect.' substituted for 'if—' and clauses (i) and (ii).

"(G) SPECIAL RULE UNTIL THE INSURANCE FUNDS ACHIEVE THE DESIGNATED RESERVE RATIO.—Until a deposit insurance fund achieves the designated reserve ratio, the Corporation may limit the maximum assessment on insured depository institutions under the risk-based assessment system authorized under paragraph (1) to not less than 10 basis points above the average assessment on insured depository institutions under that system.

"(3) SPECIAL RULE FOR RECAPITALIZING UNDERCAPITALIZED FUNDS.—

"(A) IN GENERAL.—Except as provided in paragraph (4), if the reserve ratio of any deposit insurance fund is less than the designated reserve ratio under paragraph (2)(A)(iv), the Board of Directors shall set semiannual assessment rates for members of that fund—

"(i) that are sufficient to increase the reserve ratio for that fund to the designated reserve ratio not later than 1 year after such rates are set; or

"(ii) in accordance with a schedule promulgated by the Corporation under subparagraph (B).

"(B) Recapitalization schedules.—For purposes of subparagraph (A)(ii), the Corporation shall by regulation promulgate a schedule that specifies, at semiannual intervals, target reserve ratios for that fund, culminating by the close of the period determined under subparagraph (C) in a reserve ratio that is equal to the designated reserve ratio.

"(C) Date for achieving designated ratio.—A schedule promulgated under subparagraph (B) shall provide for achieving the designated reserve ratio not later than the earlier of—

"(i) 15 years after the date on which the schedule is implemented, or

"(ii) that number of years (rounded to the nearest whole number) after the date the schedule is implemented, determined as follows:

$$15 \times \left(1 - \frac{\text{reserve ratio}}{\text{designated reserve ratio}} \right)$$

"(D) Amending schedule.—The Corporation may, by regulation, amend a schedule promulgated under subparagraph (B), but such amendments may not extend the date specified in subparagraph (C).

"(E) Application to SAIF members.—This paragraph shall become applicable to Savings Association Insurance Fund members on January 1, 1998.

"(F) Expedited procedure for extending schedule.—

"(i) In general.—If, during the period, determined in subparagraph (C), when a fund's reserve ratio is being restored to the designated reserve ratio, the Corporation determines that maintaining assessments at levels sufficient to achieve the designated reserve ratio by the end of that period would significantly increase losses to the fund or would significantly impair the availability of credit, the following procedures shall apply:

"(I) Report required.—The Corporation shall submit a report to the Congress that—

"(aa) sets forth a revised schedule of semiannual target reserve ratios for that fund, culminating in the achievement of the designated reserve ratio; and

"(bb) provides a detailed justification for the revision.

"(II) Requirement for congressional consideration.—The proposed revised schedule of semiannual target reserve ratios shall not be implemented unless the Congress, not later than 60 calendar days after receiving the report, enacts a joint resolution approving the proposed revision.

"(ii) Procedures for expedited congressional consideration.—

"(I) Joint resolution defined.—For purposes of this clause, the term 'joint resolution' means only a joint resolution the matter after the resolving clause of which is as follows: 'That, pursuant to section 7(b)(3)(F) of the Federal Deposit Insurance Act, the Corporation may implement revisions to the schedule of semiannual target reserve ratios, culminating in the achievement of the designated reserve ratio for the ______________________ Fund, as proposed in the report submitted to the Congress on ______________________.', with the first blank space being filled with the name of the Bank Insurance Fund or the Savings Association Insurance Fund, as appropriate, and the second blank being filled with the appropriate date.

"(II) Introduction.—On the day on which a report is submitted to the House of Representatives and the Senate under clause (i)(I), a joint resolution with respect to the revised schedule specified in such report shall be introduced (by request) in the House of Representatives by the chairman of the Committee on Banking, Finance and Urban Affairs, for himself and the ranking minority member of the Committee, or by the Members of the House designated by the chairman and ranking minority member; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself and the minority leader of the Senate, or Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such a report is submitted, the joint resolution shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session.

"(III) Referral to committee.—Any joint resolutions introduced in the House of Representatives shall be referred to the appropriate committee and all joint resolutions introduced in the Senate shall be referred to the Committee on Banking, Housing, and Urban Affairs.

"(IV) Discharge from committee.—If the committee of either House to which a joint resolution has been referred has not reported the joint resolution at the end of 30 days after its referral, the committee shall be discharged from further consideration of the joint resolution and of any other joint resolution introduced with respect to the same matter.

"(V) EXPEDITED FLOOR CONSIDERATION.—Any such joint resolution shall be considered in the Senate in accordance with section 601(b) of the International Security Assistance and Arms Export Control Act of 1976. For the purpose of expediting the consideration and enactment of joint resolutions under this subsection, a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

"(VI) JOINT RESOLUTION RECEIVED FROM OTHER HOUSE.—In the case of a joint resolution described in this clause, if, before the passage by one House of a joint resolution of that House, that House receives a resolution with respect to the same matter from the other House, then—

"(aa) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

"(bb) the vote on final passage shall be on the joint resolution of the other House.

"(VII) COMPUTING TIME PERIODS.—In computing the 60-day period referred to in clause (i)(II) and the 30-day period referred to in subclause (IV), there shall be excluded the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain or because of adjournment of the Congress sine die.

"(4) SEMIANNUAL PERIOD DEFINED.—For purposes of this section, the term 'semiannual period' means a period beginning on January 1 of any calendar year and ending on June 30 of the same year, or a period beginning on July 1 of any calendar year and ending on December 31 of the same year.

"(5) RECORDS TO BE MAINTAINED.—Each insured depository institution shall maintain all records that the Corporation may require for verifying the correctness of the institution's semiannual assessments. No insured depository institution shall be required to retain those records for that purpose for a period of more than 5 years from the date of the filing of any certified statement, except that when there is a dispute between the insured depository institution and the Corporation over the amount of any assessment, the depository institution shall retain the records until final determination of the issue.

"(6) SPECIAL ASSESSMENT TO RECOVER LOSSES ON FOREIGN DEPOSITS.—

"(A) IN GENERAL.—If the Corporation makes any payment with respect to foreign deposits, it shall recover the amount of that payment as soon as practicable by imposing special assessments on foreign deposits held by all members of that deposit insurance fund, beginning in the next semiannual period.

"(B) PAYMENT WITH RESPECT TO FOREIGN DEPOSITS DEFINED.—As used in this paragraph, the term 'payment with respect to foreign deposits' means the amount, as determined by the Corporation in its sole discretion, obtained by—

"(i) dividing a depository institution's foreign deposits by that institution's total liabilities; and

"(ii) multiplying the resulting quotient by the estimated total loss incurred by the deposit insurance fund with respect to the institution.

"(C) CALCULATION.—

"(i) BEFORE JANUARY 1, 1995.—Until January 1, 1995, the calculation under subparagraph (B)(i) shall be based on whichever of the following amounts of foreign deposits and total liabilities yields the greater quotient under subparagraph (B)(i):

"(I) The amount of foreign deposits and total liabilities on the date on which a receiver was appointed for the institution or the Corporation initiated assistance under section 13(c) with respect to the institution.

"(II) The average for the period from the date on which the institution was significantly undercapitalized and first received an advance from a Federal Reserve bank and ending on the date described in subclause (I).

"(ii) AFTER JANUARY 1, 1995.—After January 1, 1995, the calculation under subparagraph (B)(i) shall be based on the amount of foreign deposits and total liabilities on the date on which a receiver was appointed for the institution or the Corporation initiated assistance under section 13(c) with respect to the institution.

"(D) FOREIGN DEPOSITS DEFINED.—For purposes of this paragraph, the term 'foreign deposit' means any deposit described in subparagraph (A) or (B) of section 3(*l*)(5).".

(b) CERTIFIED STATEMENTS AND PAYMENT PROCEDURES.—Section 7(c) of the Federal Deposit Insurance Act (12 U.S.C. 1817(c)) is amended to read as follows:

"(c) CERTIFIED STATEMENTS; PAYMENTS.—

"(1) CERTIFIED STATEMENTS REQUIRED.—

"(A) IN GENERAL.—Each insured depository institution shall file with the Corporation a certified statement containing such information as the Corporation may require for determining the institution's semiannual assessment.

"(B) FORM OF CERTIFICATION.—The certified statement required under subparagraph (A) shall—

"(i) be in such form and set forth such supporting information as the Board of Directors shall prescribe; and "(ii) be certified by the president of the depository institution or any other officer designated by its board of directors or trustees that to the best of his or her knowledge and belief, the statement is true, correct and complete, and in accordance with this Act and regulations issued hereunder.

"(2) PAYMENTS REQUIRED.—

"(A) IN GENERAL.—Each insured depository institution shall pay to the Corporation the semiannual assessment imposed under subsection (b).

"(B) FORM OF PAYMENT.—The payments required under subparagraph (A) shall be made in such manner and at such time or times as the Board of Directors shall prescribe by regulation.

"(3) NEWLY INSURED INSTITUTIONS.—To facilitate the administration of this section, the Board of Directors may waive the requirements of paragraphs (1) and (2) for the semiannual period in which a depository institution becomes insured.".

(c) REGULATIONS.—To implement the risk-based assessment system required under section 7(b) of the Federal Deposit Insurance Act (as amended by subsection (a)), the Federal Deposit Insurance Corporation shall—

(1) provide notice of proposed regulations in the Federal Register, not later than December 31, 1992, with an opportunity for comment on the proposal of not less than 120 days; and

(2) promulgate final regulations not later than July 1, 1993.

(d) AUTHORITY TO PRESCRIBE REGULATIONS AND DEFINITIONS.—Section 10 of the Federal Deposit Insurance Act (12 U.S.C. 1820) is amended by adding at the end the following:

"(f) AUTHORITY TO PRESCRIBE REGULATIONS AND DEFINITIONS.—Except to the extent that authority under this Act is conferred on a Federal banking agency other than the Corporation, the Corporation may—

"(1) prescribe regulations to carry out this Act; and

"(2) by regulation define terms as necessary to carry out this Act.".

(e) CONFORMING AMENDMENTS.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended—

(1) in section 5(d)(3)(B)—

(A) by striking "average assessment base" and inserting "deposits"; and

(B) by striking "shall—" and all that follows through "(iii) shall be treated" and inserting "shall be treated";

(2) in section 7(a)(5) by striking "and for the computation of assessments provided in subsection (b) of this section";

(3) in section 7 by amending subsection (d) to read as follows:

"(d) CORPORATION EXEMPT FROM APPORTIONMENT.—Notwithstanding any other provision of law, amounts received pursuant to any assessment under this section and any other amounts received by the Corporation shall not be subject to apportionment for the purposes of chapter 15 of title 31, United States Code, or under any other authority."; and

(4) in the last sentence of section 8(q) by striking "upon" and inserting "with respect to".

(f) TRANSITION TO NEW ASSESSMENT SYSTEM.—To carry out the amendments made by this section, the Corporation may promulgate regulations governing the transition from the assessment system in effect on the date of enactment of this Act to the assessment system required under the amendments made by this section.

(g) EFFECTIVE DATE OF AMENDMENTS.—The amendments made by this section shall become effective on the earlier of—

(1) the date on which final regulations promulgated in accordance with subsection (c) become effective; or

(2) January 1, 1994.

SEC. 213. RISK-BASED REINSURANCE.

(a) RISK-BASED REINSURANCE PILOT PROGRAM.—

(1) ESTABLISHMENT.—The Federal Deposit Insurance Corporation (hereafter referred to as the "Corporation") shall establish a pilot program to assess the viability of using a system of reinsurance to assist the Corporation in establishing risk-based assessment rates.

(2) PROGRAM DESCRIPTION.—Under the pilot program established in accordance with paragraph (1) the Corporation shall be required to obtain reinsurance from eligible reinsurers, which shall provide reinsurance to the Corporation for a percentage of the insured risks, not to exceed 10 percent, posed by the participating banks to the Corporation.

(3) PROGRAM PARTICIPATION.—

(A) IN GENERAL.—The Corporation shall select not more than 50 bank holding companies that have not less than $1,000,000,000 each in aggregate assets at the time of selection for participation, the banking affiliates of which would be the participating banks in the pilot program.

(B) ADDITIONAL REQUIREMENTS.—The Corporation shall establish any additional criteria for the selection of participating banks that it determines appropriate for the protection of the insurance funds and the public interest.

(4) ELIGIBLE REINSURERS.—

(A) IN GENERAL.—For purposes of this section, an eligible reinsurer shall include any qualified insurer that—

(i) meets appropriate criteria (including capital standards that, in the Corporation's judgment, will ensure that the reinsurer will be able to pay claims when called upon to do so) prescribed by the Corporation, subject to the requirements of any applicable State laws, for the qualification of reinsurers to offer risk-based reinsurance; and

(ii) meets any other criteria that the Corporation determines appropriate for the protection of the insurance funds and the public interest.

(B) INSTITUTION AFFILIATION.—Notwithstanding any other provision of law, a reinsurer may be an affiliate of a bank holding company or a savings and loan holding company, except that an insurance affiliate of such holding company may not offer reinsurance coverage for an affiliated bank.

(5) REINSURANCE ASSESSMENTS.—Under the pilot program, the Corporation shall be solely responsible for paying reinsurance charges to participating reinsurers on behalf of each participating bank from each such bank's overall assessment under section 7(b) of the Federal Deposit Insurance Act.

(6) ANNUAL REPORT TO CONGRESS.—The Corporation shall submit a report to the Congress annually on the progress of the pilot program established under paragraph (1).

(7) CORPORATION'S DISCRETION TO IMPLEMENT NATIONAL REINSURANCE SYSTEM.—Upon the termination of the pilot program established under this section, the Corporation may, by vote of the Board of Directors of the Corporation, implement a reinsurance system for all insured depository institutions under section 7A of the Federal Deposit Insurance Act, if the Corporation determines, and reports in writing to the Congress, that—

(A) a reinsurance system would be viable for insured depository institutions;

(B) reinsurance rates established under a reinsurance system can be at least as effective in measuring the relative risk to the deposit insurance funds posed by the insured depository institutions which would be covered by the system as any risk-based assessment system established under section 7(b) of the Federal Deposit Insurance Act, particularly the risks posed by profitable institutions that meet applicable capital standards;

(C) the Corporation can adequately measure and monitor the financial health of reinsurers; and

(D) it is in the public interest to implement a reinsurance system to assist the Corporation in establishing deposit insurance assessments for large insured depository institutions.

(8) IMPLEMENTATION DATE; DURATION.—The pilot program established under paragraph (1) shall be implemented not later than the effective date of the risk-based assessment system established by the Corporation under section 7(b) of the Federal Deposit Insurance Act, and shall terminate 3 years after such effective date.

(b) RISK-BASED REINSURANCE FOR LARGE INSTITUTIONS.—

(1) IN GENERAL.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting after section 7 the following new section:

"SEC. 7A. RISK-BASED INSURANCE FOR LARGE INSTITUTIONS.

"(a) PURPOSE.—The purpose of this section is to establish a risk-based deposit insurance assessment rate system through reinsurance coverage for a percentage of the insured risk of large bank or large savings association failures, not to exceed 10 percent.

"(b) COVERED INSTITUTIONS.—For purposes of this section, the term 'covered institution' means a member of a deposit insurance fund that the Corporation finds, in accordance with regulations implementing this subsection—

"(1) has total assets of more than $1,000,000,000 on December 31, 1991, or thereafter; or

"(2) is owned by a bank holding company or a savings and loan holding company, respectively, that has total assets of more than $1,000,000,000 on December 31, 1991.

"(c) RISK-BASED ASSESSMENTS.—

"(1) TRANSITION PERIOD ASSESSMENTS.—After a covered institution enters into a reinsurance agreement under subsection (g), but prior to the date determination described in paragraph (2), each covered institution shall pay a deposit insurance assessment that is—

"(A) equal to the assessment determined under section 7(b); or

"(B) determined by scaling up the premium established by a reinsurance agreement under subsection (g) and applying that scaled-up rate to the institution's average assessment base,

whichever, in the judgment of the Corporation, better reflects the inherent risks of the institution, subject to adjustments authorized by subsection (d).

"(2) RISK-BASED REINSURANCE ASSESSMENTS.—After the Corporation determines that—

"(A) a sufficient number of covered institutions, as determined by the Corporation, are covered by reinsurance agreements; and

"(B) the risk-based premium based on scaling up the assessments charged under a reinsurance agreement, subject to adjustments under subsection (d), provides risk assessments that differentiate between banks according to risk at least as effectively as under the risk-based formula in section 7(b),

each covered institution, except for those that are not yet required to obtain a reinsurance agreement under the phase-in schedule established under subsection (e)(1), shall pay a deposit insurance assessment that is determined by scaling up the premium rate established by the reinsurance agreement under subsection (g) and applying that scaled-up rate to the institution's average assessment base, subject to adjustments authorized by subsection (d). A covered institution that fails to obtain a reinsurance agreement in a timely manner under the phase-in schedule established under subsection (e)(1) shall have its insurance assessments determined under the provisions of subsection (j)(1).

"(d) BANK INSURANCE FUND ADJUSTMENTS.—The Corporation shall make proportionate adjustments, under procedures established by regulation, to each covered institution's total deposit insurance assessment upwards or downwards, as necessary to ensure to the extent practicable and consistent with the public interest that all such assessments, in the aggregate, are sufficient to maintain the deposit insurance fund at or above the designated reserve ratio required by section 7(b)(1)(B), or to restore the deposit insurance fund to the designated reserve ratio within a reasonable period of time.

"(e) PHASE-IN SCHEDULE AND AMOUNT OF REINSURANCE.—

"(1) PHASE-IN SCHEDULE FOR OBTAINING REINSURANCE AGREEMENTS.—

"(A) Establishment; publication.—The Corporation shall—

"(i) establish a timetable designed to ensure that, by the end of the phase-in period and to the maximum extent practicable, all covered institutions have obtained reinsurance under this section; and

"(ii) publish such timetable in the Federal Register.

"(B) Criteria.—The timetable established under subparagraph (A) shall—

"(i) require some covered institutions to begin to obtain reinsurance not later than 1 year following the end of the reinsurance pilot program established under section 213(a) of the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991, if the Corporation recommends establishing a reinsurance system for setting risk-based premiums for certain institutions under the provisions of section 7A of the Federal Deposit Insurance Act;

"(ii) require all covered institutions to obtain reinsurance contracts over a period of not less than 5 years or not more than 10 years after such date, unless the Corporation determines that a shorter or longer period would be in the public interest; and

"(iii) provide ample opportunity for the development of a competitive reinsurance market.

"(C) Notification.—The Corporation shall notify each covered institution not less than 1 year before the institution will be required to obtain reinsurance.

"(2) Level of reinsurance.—The Corporation shall, in accordance with paragraph (3), establish a uniform reinsurance level that is not less than 3 percent nor more than 10 percent of the insured deposits of each covered institution.

"(3) Criteria for setting level of coverage.—For purposes of paragraph (2), the Corporation shall establish a level of reinsurance coverage that is sufficient to ensure—

"(A) that the assessment rates charged by reinsurers can be accurately scaled up to reasonably reflect the total insured risk of failure presented by each covered institution; and

"(B) that, over the transition period, there is a reasonable likelihood that enough reinsurance capacity is available to support a competitive reinsurance market.

"(4) Phase-in.—

"(A) In general.—The Corporation shall—

"(i) require reinsurers to provide the level of reinsurance established under paragraph (2) not later than 5 years after the phase-in period under subsection (d)(1) begins; and

"(ii) establish interim reinsurance levels applicable during the 5-year transition period described in clause (i).

"(B) Variations.—The Corporation may permit variations from the phase-in schedules established under paragraph (1) and this paragraph if—

"(i) a substantial change in a covered institution's circumstances hinders the institution from complying with the phase-in schedule established under paragraph (1); or

"(ii) a covered institution cannot obtain reinsurance coverage at the specified time due to lack of market availability.

"(f) ELIGIBLE REINSURERS AND REINSURANCE CONTRACTS.—

"(1) IN GENERAL.—For purposes of this section, an 'eligible reinsurer' shall include any qualified insurer that—

"(A) meets appropriate criteria (including capital criteria that, in the Corporation's judgment, will ensure that the reinsurer will be able to pay claims when called upon to do so) prescribed by the Corporation, subject to the requirements of any applicable State laws, for the qualification of reinsurers to offer risk-based reinsurance to covered institutions;

"(B) offers reinsurance terms that reflect a risk-based approach to pricing; and

"(C) meets any other criteria that the Corporation determines appropriate for the protection of the insurance funds and the public interest.

"(2) INSTITUTION AFFILIATION.—An eligible reinsurer may be an affiliate of a bank holding company or a savings association holding company, except that an insurance affiliate may not offer reinsurance to an affiliated bank or savings association.

"(3) TERMS OF REINSURANCE CONTRACTS.—

"(A) The Corporation is authorized to establish general terms and conditions for reinsurance contracts, including, but not limited to, the length of such contracts, the amount of information pertaining to the reinsured institution held by the Corporation that the reinsurer will have access to, the frequency of price changes permitted, and the conditions for termination; and

"(B) The Corporation must approve all reinsurance agreements negotiated pursuant to subsection (g).

"(g) REINSURANCE AGREEMENTS.—

"(1) NEGOTIATIONS.—Eligible reinsurers shall negotiate directly with covered institutions to establish—

"(A) the price of reinsurance for that portion of the insured risk covered by the reinsurer; and

"(B) the rights of the reinsurer to review documents maintained by the covered institution in order to assess risk and determine the price.

Any agreements negotiated under this paragraph are subject to the approval of the Corporation under subsection (e)(3)(B) of this section.

"(2) INSURANCE FOR UNINSURED DEPOSITS.—An eligible reinsurer may offer insurance coverage for deposits that are not federally insured to any bank or savings association, whether or not it is covered by reinsurance with this section.

"(h) REINSURANCE REQUIREMENTS.—

"(1) COMPLIANCE EXTENSIONS.—If the Corporation finds that—

"(A) there is a substantial shortage of private sector reinsurance capacity at any time after the end of the phase-in schedule established under subsection (e)(1); or

"(B) because of a significant period of financial stress, it is required in the public interest;

the Corporation is authorized to suspend the requirement for a covered institution to obtain reinsurance for periods of 6 months. During such 6-month periods, deposit insurance assessments for all covered institutions shall be made in accordance with section 7(b). The Corporation shall report to the Committee on Banking, Housing, and Urban Affairs of the Senate, and to the Committee on Banking, Finance and Urban Affairs of the House of Representatives each time it uses its authority under this subsection, setting forth the reasons for such use.

"(2) REINSURANCE PREMIUMS.—If the Corporation—

"(A) finds that the risk-based premium based on a reinsurance agreement charged a covered institution is significantly less than the premium that would be charged under the section 7(b) risk-based formula; and

"(B) believes that the reinsurance agreement-based assessment does not with reasonable accuracy reflect the inherent insured risks of the covered institution,

the premium for such institution shall be assessed under the section 7(b) risk-based formula. The Corporation shall give a covered institution whose premium would be changed under this paragraph and the reinsurer involved an opportunity to comment on the Corporation's findings not less than 30 days before changing the premium assessment for such covered institution. The Corporation shall return the premium charged any covered institution to the level based on scaling up the assessment charged under the reinsurance agreement, subject to adjustments authorized by subsection (d), if the Corporation finds that subparagraph (B) no longer applies.

"(i) PAYMENTS.—The premium negotiated between a covered institution and a reinsurer in accordance with subsection (g) shall be paid by the Corporation to the reinsurer on a payment schedule established by the Corporation. Such schedule shall provide that covered institutions shall promptly pay, and reinsurers will promptly be paid for, any premium increases during the term of a reinsurance agreement. Assessments under this section shall be paid by the institution to the Corporation in accordance with subsections (b)(2) and (c) through (h) of section 7.

"(j) FAILURE TO OBTAIN REINSURANCE.—

"(1) ASSESSMENT PENALTY.—Except as provided in subsection (k), upon the failure of a covered institution to obtain reinsurance or renew a reinsurance agreement as required under this section, the Corporation shall make a deposit insurance assessment on the institution that is at least 8 basis points higher than the deposit insurance assessment rate that would be charged that institution under the section 7(b) risk-based formula, or equal to the highest assessment rate charged any covered institution with reinsurance having the same rating under the Uniform Financial Institutions Rating System (hereafter 'CAMEL rating') derived from an evaluation of an institution's capital adequacy, asset quality, management, earnings, and liquidity, whichever is higher.

"(2) SPECIAL EXAMINATION.—For a covered institution that is subject to treatment under paragraph (1), the Corporation shall—

"(A) conduct an immediate full-scope examination of the institution; and

"(B) make adjustments to the institution's CAMEL rating, if appropriate.

"(3) TERMINATION OF INSURANCE.—After the transition period in subsection (e)(1) has ended, the Corporation shall not provide deposit insurance to any covered institution that is unable to obtain reinsurance for more than 2 consecutive years, unless reinsurance requirements are suspended under subsection (h)(1).

"(k) EFFECTIVE DATE.—This section shall become effective on the date the Corporation, under the procedures established in section 213(a)(7) of the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991, reports to the Congress that it is prepared to begin implementing a national reinsurance system.".

(2) AMENDMENTS TO THE BANK HOLDING COMPANY ACT OF 1956.—Section 4(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)) is amended—

(A) by redesignating paragraphs (9) through (14) as paragraphs (10) through (15), respectively; and

(B) by inserting after paragraph (8) a new paragraph as follows:

"(9) shares of any company, the activities of which are limited solely to providing reinsurance in accordance with the requirements of section 7A of the Federal Deposit Insurance Act;".

SEC. 214. REAL ESTATE LENDING STANDARDS.

(a) IN GENERAL.—Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following new subsection:

"(u) REAL ESTATE LENDING.—

"(1) UNIFORM REGULATIONS.—Not more than 9 months after the date of enactment of the Comprehensive Deposit Insurance and Taxpayer Protection Act of 1991, each appropriate Federal banking agency shall adopt uniform regulations prescribing standards for extensions of credit that are—

"(A) secured by liens on interests in real estate; or

"(B) made for the purpose of financing the construction of a building or other improvements to real estate.

"(2) STANDARDS.—

"(A) CRITERIA.—In prescribing standards under paragraph (1), the agencies shall consider—

"(i) the risk posed to the deposit insurance funds by such extensions of credit;

"(ii) the need for safe and sound operation of insured depository institutions; and

"(iii) the availability of credit.

"(B) VARIATIONS PERMITTED.—In prescribing standards under paragraph (1), the appropriate Federal banking agencies may differentiate among types of loans—

"(i) as may be required by Federal statute;

"(ii) as may be warranted, based on the risk to the deposit insurance fund; or

"(iii) as may be warranted, based on the safety and soundness of the institutions.

"(3) EFFECTIVE DATE.—The regulations adopted under paragraph (1) shall become effective not later than 15 months after the date of enactment of the Comprehensive Deposit Insurance and Taxpayer Protection Act of 1991. Such regulations shall continue in effect except as uniformly amended by the appropriate Federal banking agencies, acting in concert.

"(4) LOAN-TO-VALUE RATIOS APPLICABLE IF REGULATIONS NOT ADOPTED AS REQUIRED.—The following provisions shall become effective 15 months after the date of enactment of the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991 if the Federal banking agencies fail to adopt uniform regulations under paragraph (1) within the period specified in that paragraph:

"(A) IN GENERAL.—An insured depository institution shall not extend credit secured by real property if the extension of credit would exceed the following percentage of the appraised value of that property:

"(i) 1- TO 4-FAMILY DWELLING.—95 percent, if the extension of credit is to finance the purchase of, or to refinance outstanding indebtedness on, property improved by a completed 1- to 4-family dwelling.

"(ii) COMPLETED STRUCTURE.—80 percent, if the property is improved by 1 or more completed structures and—

"(I) none of the structures is a completed 1- to 4-family dwelling; or

"(II) the extension of credit is not described in clause (i).

"(iii) IMPROVED PROPERTY.—70 percent, if the property is improved but has no completed structure.

"(iv) UNDEVELOPED PROPERTY.—65 percent, if—

"(I) the property is undeveloped; and

"(II) the extension of credit is not an extension of credit to an active farming operation secured by agricultural land.

"(B) EXCEPTIONS.—Subparagraph (A) does not apply to any extension of credit on which the principal and interest are insured or guaranteed by a Federal agency, a federally related entity, or a State or local housing finance agency, as defined in regulations of the appropriate Federal banking agency.

"(C) REGULATORY AUTHORITY.—The appropriate Federal banking agency may adjust the limitations in subparagraph (A) if the agency determines that the limitation that would otherwise apply—

"(i) is unreasonable and limits safe and sound extensions of credit; or

"(ii) does not sufficiently curtail unsafe and unsound practices.".

(b) CONFORMING AMENDMENT.—Section 24(a) of the Federal Reserve Act (12 U.S.C. 371(a)) is amended by striking "such terms," and all that follows through the period and inserting "section 18(u) of the Federal Deposit Insurance Act and such restrictions and requirements as the Comptroller of the Currency may prescribe by regulation or order.".

SEC. 215. RESTRICTING RISKY BANK ACTIVITIES.

(a) IN GENERAL.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting after section 23 the following new section:

"SEC. 24. BANK ACTIVITIES.

"(a) FDIC MAY RESTRICT RISKY BANK ACTIVITIES.—The Corporation may, by regulation or order—

"(1) restrict any activity of an insured bank that poses a significant risk to the deposit insurance fund;

"(2) require that activities not prohibited under this section be conducted through a subsidiary; and

"(3) impose such other restrictions and requirements as the Corporation determines to be necessary to prevent a significant risk to the deposit insurance fund.

"(b) EXERCISE OF STATE-AUTHORIZED POWERS EXCEEDING THE POWERS OF A NATIONAL BANK.—

"(1) IN GENERAL.—An insured State bank shall not, directly or indirectly, engage as principal in any activity that is not permissible for a national bank unless—

"(A) the State bank is adequately capitalized, as defined in section 37; and

"(B) the Corporation has, by regulation or order, determined that engaging in that activity—

"(i) would pose no significant risk to the deposit insurance fund; and

"(ii) would be consistent with the purposes of this Act.

"(2) EXCEPTION FOR WELL-CAPITALIZED BANKS.—Paragraph (1) does not prohibit an insured State bank from engaging as principal, directly or indirectly, in an activity not permissible for a national bank if—

"(A) the bank is well-capitalized, as defined in section 37;

"(B) the bank has filed with the Corporation a notice describing the activity;

"(C) the Corporation has not, before the expiration of the 90-day period beginning on the date on which the notice is filed, determined that engaging in that activity—

"(i) would pose a significant risk to the deposit insurance fund; or

"(ii) would be inconsistent with the purposes of this Act.

"(3) EXCEPTION FOR SUBSIDIARIES.—Paragraph (1) does not prohibit a subsidiary of an insured State bank from engaging as principal in an activity that is not permissible for a national bank if—

"(A) the State bank is adequately capitalized, as defined in section 37; and

"(B) the Corporation has, by regulation or order, determined that engaging in the activity in an insured bank or a subsidiary of an insured bank—

"(i) would pose no significant risk to the deposit insurance fund; and

"(ii) would be consistent with the purposes of this Act.

"(c) Equity Investments by State Banks.—

"(1) In general.—An insured State bank shall not, directly or indirectly, acquire or retain any equity investment of a type or in an amount that is not permissible for a national bank.

"(2) Exceptions.—Paragraph (1) does not prohibit an insured State bank from doing any of the following:

"(A) Community development investments by subsidiaries.—Acquiring or retaining shares of a subsidiary, if the subsidiary engages primarily in the promotion of community welfare (such as the economic rehabilitation and development of low-income areas by providing housing, services, or jobs for residents).

"(B) Investments through separately capitalized subsidiaries.—Acquiring an equity investment of a type or in an amount that is not permissible for a national bank if all of the State bank's investments in and extensions of credit to the subsidiary are deducted from the bank's capital.

"(C) Risk retention.—Acquiring or retaining not more than 10 percent of a corporation that only—

"(i) provides directors', trustees', and officers' liability insurance coverage, or bankers' blanket bond group insurance coverage for insured depository institutions; or

"(ii) reinsures such policies.

"(D) Savings bank life insurance.—Acquiring or retaining shares of a savings bank life insurance company, if the insured State bank is organized under the laws of Connecticut, Massachusetts, or New York.

"(3) Transition rule.—The Corporation shall require any insured State bank to divest itself of any equity investment the retention of which is not permissible under paragraph (1) as quickly as can be prudently done, and in any event not later than August 1, 1996.

"(d) Corporate Debt Securities Not of Investment Grade.—

"(1) In general.—An insured bank shall not, directly or indirectly, acquire any corporate debt security not of investment grade.

"(2) Accounting.—An insured bank retaining any corporate debt security not of investment grade shall account for that security as if the security were held for sale.

"(3) Definition.—The term 'corporate debt security not of investment grade' has the same meaning as in section 28(d)(4).

"(e) OTHER AUTHORITY NOT AFFECTED.—This section does not limit any authority of a Federal banking agency or a State to impose more stringent restrictions.".

(b) EFFECTIVE DATE.—Section 24 of the Federal Deposit Insurance Act (as added by subsection (a)) shall become effective upon the date of enactment of this Act, except that subsections (b) and (c) of section 24 shall become effective 2 years after that date of enactment.

(c) TRANSITION RULE FOR INVESTMENTS IN CORPORATE EQUITY SECURITIES.—

(1) IN GENERAL.—Notwithstanding section 24(c) of the Federal Deposit Insurance Act (as added by subsection (a))—

(A) during the 2 years following the date of enactment of this Act, an insured State bank or subsidiary of an insured State bank may acquire or retain corporate equity securities to the extent permitted by State law on May 14, 1991;

(B) during each of the 3 years following the effective date of section 24(c), each insured State bank and each subsidiary of an insured State bank shall reduce by not less than one-third the corporate equity securities that—

(i) it held on that effective date; and

(ii) are of a type or in an amount not permissible under section 24(c); and

(C) during the first 5 years following the effective date of section 24(c), an insured State bank or subsidiary of an insured State bank may acquire or retain any investment in any publicly traded index of corporate equity securities, to the extent permitted by State law on May 14, 1991.

(2) ACCOUNTING TREATMENT.—In calculating compliance with paragraph (1)(B), corporate equity securities held for investment by insured State banks and subsidiaries of insured State banks shall not be required to be marked to market.

(3) STUDY AND REPORT.—

(A) STUDY REQUIRED.—The Comptroller General shall conduct a study regarding investments in corporate equity securities by insured State banks and their subsidiaries. Such study shall examine—

(i) the extent to which insured State banks and their subsidiaries have invested in corporate equity securities;

(ii) the risks and returns on those investments;

(iii) their contribution to profitability;

(iv) the extent to which States limit the types and amounts of such investments; and

(v) whether such investments are consistent with the purposes of this Act.

(B) REPORT REQUIRED.—Not later than 18 months after the date of enactment of this section, the Comptroller General shall transmit to the Congress a report regarding the results of the study described in subparagraph (A), along with recommendations for such legislative or administrative actions as the Comptroller General deems appropriate.

SEC. 216. SAFEGUARDS AGAINST INSIDER ABUSE.

(a) Recodification of Current Law Restricting Extensions of Credit to Insiders.—Section 22(h) of the Federal Reserve Act (12 U.S.C. 375b) is amended to read as follows:

"(h) Extensions of Credit to Executive Officers, Directors, and Principal Shareholders of Member Banks.—

"(1) In general.—No member bank may extend credit to any of its executive officers, directors, or principal shareholders, or to any related interest of such a person, except to the extent permitted under paragraphs (2), (3), (4), and (6).

"(2) Preferential terms prohibited.—A member bank may extend credit to its executive officers, directors, or principal shareholders, or to any related interest of such a person, only if the extension of credit—

"(A) is made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions by the bank with persons who are not executive officers, directors, principal shareholders, or employees of the bank; and

"(B) does not involve more than the normal risk of repayment or present other unfavorable features.

"(3) Prior approval required.—A member bank may extend credit to a person described in paragraph (1) in an amount that, when aggregated with the amount of all other outstanding extensions of credit by that bank to each such person and that person's related interests, would exceed an amount prescribed by regulation of the appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act) only if—

"(A) the extension of credit has been approved in advance by a majority vote of that bank's entire board of directors; and

"(B) the interested party has abstained from participating, directly or indirectly, in the deliberations or voting on the extension of credit.

"(4) Aggregate limit on extensions of credit to any executive officer or principal shareholder.—A member bank may extend credit to any executive officer or principal shareholder, or to any related interest of such a person, only if the extension of credit is in an amount that, when aggregated with the amount of all outstanding extensions of credit by that bank to that person and that person's related interests, would not exceed the limits on loans to a single borrower established by section 5200 of the Revised Statutes. For purposes of this paragraph, section 5200 of the Revised Statutes shall be deemed to apply to a State member bank as if the State member bank were a national banking association.

"(5) [Reserved.]

"(6) Overdrafts by executive officers and directors prohibited.—

"(A) In general.—If any executive officer or director has an account at the member bank, the bank may not pay on behalf of that person an amount exceeding the funds on deposit in the account.

"(B) Exceptions.—Subparagraph (A) does not prohibit a member bank from paying funds in accordance with—

"(i) a written preauthorized, interest-bearing extension of credit specifying a method of repayment; and

"(ii) a written preauthorized transfer of funds from another account of the executive officer or director at that bank.

"(7) [Reserved.]

"(8) Executive officer, director, or principal shareholder of certain affiliates treated as executive officer, director, or principal shareholder of member bank.—For purposes of this subsection, any executive officer, director, or principal shareholder (as the case may be) of any bank holding company of which the member bank is a subsidiary, or of any other subsidiary of that company, shall be deemed to be an executive officer, director, or principal shareholder (as the case may be) of the member bank.

"(9) Definitions.—For purposes of this subsection:

"(A) Company.—

"(i) In general.—Except as provided in clause (ii), the term 'company' means any corporation, partnership, business or other trust, association, joint venture, pool syndicate, sole proprietorship, unincorporated organization, or other business entity.

"(ii) Exceptions.—The term 'company' does not include—

"(I) an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act); or

"(II) a corporation the majority of the shares of which are owned by the United States or by any State.

"(B) Control.—A person controls a company or bank if that person, directly or indirectly, or acting through or in concert with 1 or more persons—

"(i) owns, controls, or has the power to vote 25 percent or more of any class of the company's voting securities;

"(ii) controls in any manner the election of a majority of the company's directors; or

"(iii) has the power to exercise a controlling influence over the company's management or policies.

"(C) Executive officer.—A person is an 'executive officer' of a company or bank if that person participates or has authority to participate (other than as a director) in major policymaking functions of the company or bank.

"(D) Extension of credit.—A member bank extends credit by making or renewing any loan, granting a line of credit, or entering into any similar transaction as a result of which a person becomes obligated (directly or indirectly, or by any means whatsoever) to pay money or its equivalent to the bank.

"(E) [Reserved.]

"(F) PRINCIPAL SHAREHOLDER.—The term 'principal shareholder' means any person that directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote more than 10 percent of any class of voting securities of a member bank or company. For purposes of paragraph (4), if a member bank has its main banking office in a city, town, or village with a population of less than 30,000, the preceding sentence shall apply with '18 percent' substituted for '10 percent'.

"(G) RELATED INTEREST.—A 'related interest' of a person is—

"(i) any company controlled by that person; and

"(ii) any political or campaign committee that is controlled by that person or the funds or services of which will benefit that person.

"(H) SUBSIDIARY.—The term 'subsidiary' has the same meaning as in section 2 of the Bank Holding Company Act of 1956.

"(10) BOARD'S RULEMAKING AUTHORITY.—The Board of Governors of the Federal Reserve System may prescribe such regulations, including definitions of terms, as it determines to be necessary to effectuate the purposes and prevent evasions of this subsection.".

(b) REQUIRING DEPOSITORY INSTITUTIONS TO FOLLOW NORMAL CREDIT UNDERWRITING PROCEDURES WHEN EXTENDING CREDIT TO INSIDERS.—Section 22(h)(2) of the Federal Reserve Act (12 U.S.C. 375b(2)), as amended by subsection (a), is amended—

(1) by striking "and" at the end of subparagraph (A);

(2) by striking the period at the end of subparagraph (B) and inserting "; and"; and

(3) by inserting after subparagraph (B) the following new subparagraph:

"(C) the bank follows credit underwriting procedures that are not less stringent than those applicable to comparable transactions by the bank with persons who are not executive officers, directors, principal shareholders, or employees of the bank.".

(c) APPLYING TO DIRECTORS THE LIMIT ON LOANS TO ONE BORROWER.—Section 22(h)(4) of the Federal Reserve Act (12 U.S.C. 375b(4)), as amended by subsection (a), is amended—

(1) by inserting ", DIRECTOR," after "AGGREGATE LIMIT ON EXTENSIONS OF CREDIT TO ANY EXECUTIVE OFFICER"; and

(2) by inserting ", director," after "A member bank may extend credit to any executive officer".

(d) LIMITING DEPOSITORY INSTITUTION'S AGGREGATE EXTENSIONS OF CREDIT TO INSIDERS.—

(1) IN GENERAL.—Section 22(h)(5) of the Federal Reserve Act (12 U.S.C. 375b(5)), as amended by subsection (a), is amended to read as follows:

"(5) AGGREGATE LIMIT ON EXTENSIONS OF CREDIT TO ALL EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS.—

"(A) IN GENERAL.—A member bank may extend credit to any executive officer, director, or principal shareholder, or to any related interest of such a person, if the extension of credit is in an amount that, when aggregated with the amount of all outstanding extensions of credit by that bank to its executive officers, directors, principal shareholders, and those persons' related interests would not exceed the bank's unimpaired capital and unimpaired surplus.

"(B) MORE STRINGENT LIMIT AUTHORIZED.—The Board may, by regulation, prescribe a limit that is more stringent than that contained in subparagraph (A).

"(C) BOARD MAY MAKE EXCEPTIONS FOR CERTAIN BANKS.—The Board may, by regulation, make exceptions to subparagraph (A) for member banks with less than $100,000,000 in deposits if the Board determines that the exceptions are important to avoid constricting the availability of credit in small communities or to attract directors to such banks. In no case may the aggregate amount of all outstanding extensions of credit to a bank's executive officers, directors, principal shareholders, and those persons' related interests be more than 2 times the bank's unimpaired capital and unimpaired surplus.".

(2) CONFORMING AMENDMENT.—Section 22(h)(1) of the Federal Reserve Act (12 U.S.C. 375b(1)), as amended by subsection (a), is amended by inserting "(5)," after "(4),".

(e) PROHIBITING INSIDERS FROM ACCEPTING UNAUTHORIZED EXTENSIONS OF CREDIT.—Section 22(h)(7) of the Federal Reserve Act (12 U.S.C. 375b(7)), as amended by subsection (a), is amended to read as follows:

"(7) PROHIBITION ON KNOWINGLY RECEIVING UNAUTHORIZED EXTENSION OF CREDIT.—No executive officer, director, or principal shareholder shall knowingly receive (or knowingly permit any of that person's related interests to receive) from a member bank, directly or indirectly, any extension of credit not authorized under this subsection.".

(f) APPLYING UNIFORM RULES TO ALL COMPANIES CONTROLLING DEPOSITORY INSTITUTIONS.—Section 22(h)(8) of the Federal Reserve Act (12 U.S.C. 375b(8)), as amended by subsection (a), is amended by striking "bank holding".

(g) APPLYING SAFEGUARDS TO INSIDER TRANSACTIONS WITH DEPOSITORY INSTITUTION'S SUBSIDIARIES.—Section 22(h)(9)(E) of the Federal Reserve Act (12 U.S.C. 375b(9)(E)), as amended by subsection (a), is amended to read as follows:

"(E) MEMBER BANK.—The term 'member bank' includes any subsidiary of a member bank.".

(h) APPLYING UNIFORM RULES TO ALL PRINCIPAL SHAREHOLDERS.—Section 22(h)(9)(F) of the Federal Reserve Act (12 U.S.C. 375b(9)(F)), as amended by subsection (a), is amended by striking the last sentence.

(i) LIMITING SAVINGS ASSOCIATIONS' EXTENSIONS OF CREDIT TO EXECUTIVE OFFICERS.—Section 11(b)(1) of the Home Owners' Loan Act (12 U.S.C. 1468(b)(1)) is amended by striking "Section 22(h)" and inserting "Subsections (g) and (h) of section 22".

(j) PREVENTING SAVINGS ASSOCIATIONS FROM MAKING PREFERENTIAL EXTENSIONS OF CREDIT THROUGH CORRESPONDENT INSTITUTIONS.—Section 106(b)(2)(H)(i) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972(2)(H)(i)) is amended by inserting ", a savings bank, and a savings association (as those terms are defined in section 3 of the Federal Deposit Insurance Act)" after "mutual savings bank".

(k) LIMITING STATE NONMEMBER BANK'S EXTENSIONS OF CREDIT TO EXECUTIVE OFFICERS; CLARIFYING THE PROHIBITION ON PREFERENTIAL EXTENSIONS OF CREDIT TO INSIDERS.—Section 18(j) of the Federal Deposit Insurance Act (12 U.S.C. 1828(j)) is amended to read as follows:

"(j) RESTRICTIONS ON TRANSACTIONS WITH AFFILIATES AND INSIDERS.—

"(1) TRANSACTIONS WITH AFFILIATES.—

"(A) IN GENERAL.—Sections 23A and 23B of the Federal Reserve Act shall apply with respect to every nonmember insured bank in the same manner and to the same extent as if the nonmember insured bank were a member bank.

"(B) AFFILIATE DEFINED.—For the purpose of subparagraph (A), any company that would be an affiliate (as defined in sections 23A and 23B) of a nonmember insured bank if the nonmember insured bank were a member bank shall be deemed to be an affiliate of that nonmember insured bank.

"(2) EXTENSIONS OF CREDIT TO OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS.—Subsections (g) and (h) of section 22 of the Federal Reserve Act shall apply with respect to every nonmember insured bank in the same manner and to the same extent as if the nonmember insured bank were a member bank.

"(3) AVOIDING EXTRATERRITORIAL APPLICATION TO FOREIGN BANKS.—

"(A) TRANSACTIONS WITH AFFILIATES.—Paragraph (1) shall not apply with respect to a foreign bank solely because the foreign bank has an insured branch.

"(B) EXTENSIONS OF CREDIT TO OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS.—Paragraph (2) shall not apply with respect to a foreign bank solely because the foreign bank has an insured branch, but shall apply with respect to the insured branch.

"(C) FOREIGN BANK DEFINED.—For purposes of this paragraph, the term 'foreign bank' has the same meaning as in section 1(b)(7) of the International Banking Act of 1978.".

(*l*) EFFECTIVE DATE.—The amendments made by this section shall become effective upon the earlier of—

(1) the date on which final regulations under subsection (m)(1) become effective; or

(2) 150 days after the date of enactment of this Act.

(m) REGULATIONS.—

(1) IN GENERAL.—The Board of Governors of the Federal Reserve System shall, not later than 120 days after the date of enactment of this Act, promulgate final regulations to implement the amendments made by this section, other than the amendments made by subsections (i) and (k).

(2) LIMITING EXTENSIONS OF CREDIT TO EXECUTIVE OFFICERS.—The Federal Deposit Insurance Corporation and Director of the

Office of Thrift Supervision shall each, not later than 120 days after the date of enactment of this Act, promulgate final regulations prescribing the maximum amount that a nonmember insured bank or insured savings association (as the case may be) may lend under section 22(g)(4) of the Federal Reserve Act, as made applicable to those institutions by subsections (k) and (i), respectively.

(n) EXISTING TRANSACTIONS NOT AFFECTED.—The amendments made by this section do not affect the validity of any extension of credit or other transaction lawfully entered into on or before the effective date of those amendments.

SEC. 217. PROTECTING DEPOSITORY INSTITUTIONS FROM ABUSIVE TRANSACTIONS WITH AFFILIATES.

(a) AMENDMENTS TO SECTION 23A OF THE FEDERAL RESERVE ACT.—Section 23A of the Federal Reserve Act (12 U.S.C. 371c) is amended—

(1) by striking "per centum" each place it appears and inserting "percent";

(2) by adding at the end of subsection (a) the following new paragraph:

"(5) No bank holding company shall permit an insured depository institution that it controls to engage in any covered transaction if the amount of the covered transaction exceeds 5 percent of the institution's capital stock and surplus, unless not less than 5 days prior notice is provided to the Board and the appropriate Federal banking agency, as defined in section 3 of the Federal Deposit Insurance Act, if different.";

(3) in subsection (b)(1)(D), by amending clause (ii) to read as follows:

"(ii) any investment company, commodity pool, or other company engaged in substantially the same activities as an investment company or commodity pool for which a member bank or any affiliate is an investment adviser as defined in section 2(a)(20) of the Investment Company Act of 1940, or a commodity trading adviser as defined in section 2(a)(1)(A) of the Commodity Exchange Act, or performs activities substantially equivalent to those of an investment adviser or commodity trading adviser; and";

(4) in subsection (b)(2)(A), by inserting "and of which the member bank owns at least 80 percent of the voting stock" after "member bank";

(5) in subsection (b)(5), by inserting "that is principally engaged in deposit taking or lending activities" after "trust company";

(6) in subsection (b)(7)—

(A) in subparagraph (D), by striking "or" at the end thereof;

(B) in subparagraph (E) by inserting "to, or" after "standby letter of credit,"; and

(C) by inserting after subparagraph (E) the following new subparagraphs:

"(F) the assumption by a member bank of a liability of any affiliate, whether directly or through the transfer of the affiliate to the member bank;

"(G) except to the extent permitted under section 10(f)(2) of the Bank Holding Company Act of 1956, a loan or extension of credit to any company, or the issuance of or participation in a standby letter of credit, asset purchase agreement, indemnification, guarantee, insurance, or other facility with any company, for the purpose of enhancing the marketability of securities or other obligations or assets that are underwritten or distributed by the affiliate; or

"(H) any other financial arrangement that the Board by regulation determines to be substantially equivalent to a transaction described in this paragraph;";

(7) in subsection (c)(1)—

(A) by inserting "to, or" after "letter of credit issued"; and

(B) by striking "at the time of the transaction";

(8) in subsection (c)(4)—

(A) by inserting "the member bank or" after "issued by"; and

(B) by inserting "to, or" after "letter of credit issued"; and

(9) in subsection (d)(5), by inserting ", if the company provides services solely to affiliated member banks" before the semicolon.

(b) Amendments to Section 23B of the Federal Reserve Act.—Section 23B(b)(2) of the Federal Reserve Act (12 U.S.C. 371c-1(b)(2)) is amended by inserting "officers, directors, or employees of" after "of the bank or".

SEC. 218. INTERBANK LIABILITIES.

(a) Reducing Systemic Risks Posed by Large Bank Failures.—The Federal Reserve Act (12 U.S.C. 221 et seq.) is amended by inserting after section 22 the following new section:

"INTERBANK LIABILITIES

"Sec. 23. (a) Purpose.—The purpose of this section is to limit the risks that the failure of a large depository institution (whether or not that institution is an insured depository institution) would pose to insured depository institutions.

"(b) Aggregate Limits on Insured Depository Institutions' Exposure to Other Depository Institutions.—The Board shall, by regulation or order, prescribe standards that have the effect of limiting the risks posed by an insured depository institution's exposure to any other depository institution.

"(c) Exposure Defined.—

"(1) In general.—For purposes of subsection (b), an insured depository institution's 'exposure' to another depository institution means—

"(A) all extensions of credit to the other depository institution, regardless of name or description, including—

"(i) all deposits at the other depository institution;

"(ii) all purchases of securities or other assets from the other depository institution subject to an agreement to repurchase; and

"(iii) all guarantees, acceptances, or letters of credit (including endorsements or standby letters of credit) on behalf of the other depository institution;

"(B) all purchases of or investments in securities issued by the other depository institution;

"(C) all securities issued by the other depository institution accepted as collateral for an extension of credit to any person; and

"(D) all similar transactions that the Board by regulation determines to be exposure for purposes of this section.

"(2) EXEMPTIONS.—The Board may, at its discretion, by regulation or order, exempt transactions from the definition of 'exposure' if it finds the exemptions to be in the public interest and consistent with the purpose of this section.

"(3) ATTRIBUTION RULE.—For purposes of this section, any transaction by an insured depository institution with any person is a transaction with another depository institution to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, that other depository institution.

"(d) INSURED DEPOSITORY INSTITUTION.—For purposes of this section, the term 'insured depository institution' has the same meaning as in section 3 of the Federal Deposit Insurance Act.

"(e) RULEMAKING AUTHORITY; ENFORCEMENT.—The Board may issue such regulations and orders, including definitions consistent with this section, as may be necessary to administer and carry out the purpose of this section. The appropriate Federal banking agency shall enforce compliance with those regulations under section 8 of the Federal Deposit Insurance Act.".

(b) TRANSITION RULES.—The Board shall prescribe reasonable transition rules to facilitate compliance with section 23 of the Federal Reserve Act (as added by subsection (a)).

(c) EFFECTIVE DATE.—The amendment made by this section shall become effective 1 year after the date of enactment of this Act.

SEC. 219. REDUCING RISK TO PAYMENT SYSTEM.

(a) FINDINGS AND PURPOSE.—The Congress finds that—

(1) many financial institutions engage daily in thousands of transactions with other financial institutions, directly and through clearing organizations;

(2) the efficient processing of those transactions is important to a smoothly functioning economy;

(3) those transactions can be processed most efficiently by netting obligations among financial institutions, consistent with applicable contracts;

(4) netting procedures would reduce the systemic risk within the banking system and financial markets; and

(5) to ensure that those netting procedures are effective, they must be recognized as valid and legally binding even if a financial institution participating in the procedures is closed.

(b) BILATERAL NETTING.—

(1) NETTING CONTRACT TO BE ENFORCED.—Notwithstanding any other provision of law, the covered contractual payment obligations and the covered contractual payment entitlements between any 2 financial institutions shall be netted under any applicable netting contract.

(2) LIMIT ON OBLIGATION TO MAKE PAYMENT.—The only obligation, if any, of a financial institution to make payment with respect to covered contractual payment obligations to another financial institution arising under a single netting contract shall be equal to its net obligation under that contract to that other financial institution (and no such obligation shall exist if there is no net obligation).

(3) LIMIT ON ENTITLEMENT TO RECEIVE PAYMENT.—The only right, if any, of a financial institution to receive payments with respect to covered contractual payment entitlements from another financial institution arising under a single netting contract shall be equal to its net entitlement under that contract with respect to that other financial institution (and no such right shall exist if there is no net entitlement).

(4) FAILED FINANCIAL INSTITUTION IS ENTITLED ONLY TO ITS NET ENTITLEMENT.—Any net entitlement of a failed financial institution shall be paid to the failed financial institution under the applicable netting contract.

(c) CLEARING ORGANIZATION NETTING.—

(1) NETTING CONTRACT TO BE ENFORCED.—Notwithstanding any other provision of law, the covered contractual payment obligations and covered contractual payment entitlements of a member of a clearing organization to and from all other members of a clearing organization shall be netted under any applicable netting contract.

(2) LIMIT ON OBLIGATION TO MAKE PAYMENT.—The only obligation, if any, of a member of a clearing organization to make payment with respect to covered contractual payment obligations arising under a single netting contract to any other member of a clearing organization shall be equal to its net obligation arising under that netting contract.

(3) LIMIT ON ENTITLEMENT TO RECEIVE PAYMENT.—The only right, if any, of a member of a clearing organization to receive payment with respect to a covered contractual payment entitlement arising under a single netting contract from other members of a clearing organization shall be equal to its net entitlement arising under that netting contract.

(4) FAILED FINANCIAL INSTITUTION IS ENTITLED ONLY TO ITS NET ENTITLEMENT.—Any net entitlement of a failed member shall be paid to the failed member under the applicable netting contract. The failed member shall have no recognizable claim against any member of the clearing organization for any amount based on the covered contractual payment entitlements other than the failed member's net entitlement.

(d) PREEMPTION.—No stay, injunction, avoidance, moratorium, or similar proceeding or order, whether issued or granted by a court, administrative agency, or otherwise, and no other provision of Federal or State law shall limit or delay application of the netting provisions of an otherwise enforceable netting contract under subsections (b) and (c).

(e) Definitions.—For purposes of this section:

(1) Broker-dealer.—The term "broker-dealer" means a company that is registered or licensed under Federal or State law to act as a securities broker or dealer.

(2) Clearing organization.—The term "clearing organization" means a clearinghouse, clearing association, clearing corporation, or similar organization that provides clearing, netting, or settlement services for its members, and—

(A) that is registered as a clearing agency under the Securities Exchange Act of 1934 (12 U.S.C. 78q-1(b));

(B) that performs clearing functions for a contract market designated under the Commodity Exchange Act (7 U.S.C. 1); or

(C) in which all members other than the clearing organization are financial institutions or other clearing organizations.

(3) Covered clearing obligation.—The term "covered clearing obligation" means an obligation, subject to a netting contract, of a member of a clearing organization to make a payment to another member of a clearing organization.

(4) Covered contractual payment entitlement.—The term "covered contractual payment entitlement" means—

(A) an entitlement of a financial institution to receive a payment, subject to a netting contract, from another financial institution; and

(B) an entitlement of a member of a clearing organization to receive payment, subject to a netting contract, from another member of that clearing organization.

(5) Covered contractual payment obligation.—The term "covered contractual payment obligation" means—

(A) an obligation of a financial institution to make payment, subject to a netting contract, to another financial institution; and

(B) a covered clearing obligation.

(6) Depository institution.—The term "depository institution" means—

(A) a depository institution as defined in section 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A));

(B) a branch or agency as defined in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101(b));

(C) a corporation chartered under section 25(a) of the Federal Reserve Act (12 U.S.C. 611 et seq.); or

(D) a corporation having an agreement or undertaking with the Board of Governors of the Federal Reserve System under section 25 of the Federal Reserve Act (12 U.S.C. 601 et seq.).

(7) Failed financial institution.—The term "failed financial institution" means a financial institution that—

(A) has failed to satisfy a covered contractual payment obligation when due;

(B) is the subject of insolvency, liquidation, bankruptcy, reorganization, receivership (including the appointment of a receiver), conservatorship, or similar proceedings; or

(C) has generally ceased to meet its obligations when due.

(8) FAILED MEMBER.—The term "failed member" means any member that—

(A) has failed to satisfy a covered contractual payment obligation when due;

(B) is the subject of insolvency, liquidation, bankruptcy, reorganization, receivership (including the appointment of a receiver), conservatorship, or similar proceedings; or

(C) has generally ceased to meet its obligations when due.

(9) FINANCIAL INSTITUTION.—The term "financial institution" means a broker-dealer, a depository institution, a futures commission merchant, or any other institution as determined by the Board of Governors of the Federal Reserve System.

(10) FUTURES COMMISSION MERCHANT.—The term "futures commission merchant" means a company that is registered or licensed under Federal or State law to engage in the business of selling futures or options in commodities.

(11) MEMBER.—The term "member" means a member of or participant in a clearing organization, and includes the clearing organization.

(12) NET ENTITLEMENT.—The term "net entitlement" means the amount by which a financial institution's or member's covered contractual payment entitlements exceed its covered contractual payment obligations after netting under a netting contract.

(13) NET OBLIGATION.—The term "net obligation" means the amount by which a financial institution's or member's covered contractual payment obligations exceed its covered contractual payment entitlements after netting under a netting contract.

(14) NETTING CONTRACT.—The term "netting contract" means an agreement (including the rules of a clearing organization) between 2 or more financial institutions or members that—

(A) is governed by the laws of the United States or any subdivision thereof or any State;

(B) provides for netting present or future payment obligations or payment entitlements (including liquidation or closeout values relating to those obligations or entitlements) among the parties to the agreement; and

(C) is not precluded by Federal banking, securities, or commodities laws.

(15) PAYMENT.—The term "payment" means a payment of United States dollars, another currency, or a composite currency, including a payment to liquidate an unmatured obligation.

(f) OTHER PAYMENT SYSTEMS NOT AFFECTED.—This section shall not affect the enforceability of a netting arrangement of any payment system not subject to this section.

SEC. 220. LEAST-COST RESOLUTION.

Section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823) is amended by adding at the end the following new subsection:

"(*l*) LEAST-COST RESOLUTION REQUIRED.—

"(1) IN GENERAL.—The Corporation shall not, directly or indirectly, do any of the following with respect to any insured depository institution except to satisfy the Corporation's obligations to that institution's insured depositors at the least possible long-term cost to the deposit insurance fund:

"(A) Take any action under subsection (f)(1), (i)(3), (m), or (n) of section 11.

"(B) Take any action under subsection (c) or (k).

"(C) Expend any money from a deposit insurance fund, other than to pay for examination, supervision, and administration costs.

"(D) Assume or guarantee any liability.

"(2) DETERMINING LEAST-COSTLY APPROACH.—In determining how to satisfy the Corporation's obligations to an institution's insured depositors at the least possible long-term cost to the deposit insurance fund, the Corporation shall comply with the following provisions:

"(A) PRESENT-VALUE ANALYSIS; DOCUMENTATION REQUIRED.—The Corporation shall—

"(i) evaluate alternatives on a present-value basis, using a realistic discount rate;

"(ii) document that evaluation; and

"(iii) retain the documentation for not less than 5 years.

"(B) ECONOMIC CONDITIONS AND FINANCIAL STABILITY.—The Corporation shall not consider how the transaction would affect economic conditions or financial stability except insofar as the effects would result in quantifiable costs to the deposit insurance fund.

"(3) SYSTEMIC RISK.—

"(A) EMERGENCY ADVANCES BY TREASURY.—If, upon the written recommendation of the Board of Governors of the Federal Reserve System (upon a vote of not less than two-thirds of its members), the Secretary of the Treasury (in consultation with the President) determines in writing that—

"(i) the Corporation's compliance with paragraph (1) with respect to an insured depository institution would have serious adverse effects on economic conditions or financial stability; and

"(ii) an advance under this subparagraph would avoid or mitigate such adverse effects,

the Secretary may advance to the Corporation the amount necessary to avoid or mitigate those effects.

"(B) FUNDS ADVANCED ARE NOT RESTRICTED BY PARAGRAPH (1).—Any action taken using funds advanced by the Secretary of the Treasury under subparagraph (A) is not an action taken under any subparagraph of paragraph (1).

"(C) REPAYMENT OF ADVANCES.—The Corporation shall repay advances under subparagraph (A) expeditiously from

1 or more special assessments on the members of the deposit insurance fund of which the insured depository institution is a member, equal to the product of—

"(i) an assessment rate established by the Corporation; and

"(ii) the amount of each member's average total assets during the semiannual period, minus the sum of—

"(I) the amount of the member's average total tangible equity;

"(II) the amount of the member's average total subordinated debt; and

"(III) the amount of the member's average total deposits that are deposits described in subparagraph (A) or (B) of section 3(*l*)(5).

"(D) Interest on advances.—Advances under subparagraph (A) shall bear interest at a rate to be determined by the Secretary of the Treasury.

"(E) Documentation required.—The Secretary of the Treasury shall—

"(i) document any determination under subparagraph (A); and

"(ii) retain the documentation for review under subparagraph (F).

"(F) GAO review.—The Comptroller General of the United States shall review and report to the Congress on any determination under subparagraph (A), including—

"(i) the basis for the determination;

"(ii) the purpose for which the advance was used; and

"(iii) the likely effect of the determination and advance on the incentives and conduct of insured depository institutions and uninsured depositors.

"(G) Notice.—The Secretary of the Treasury shall provide written notice of any determination under subparagraph (A) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives, and each notice shall describe the basis for the determination.

"(H) Emergency requirement.—An advance under subparagraph (A) shall be deemed to be designated by the President and the Congress as emergency requirements.

"(4) Rule of construction.—No provision of law shall be construed as permitting the Corporation to do anything prohibited by paragraph (1) or (2), unless the provision of law expressly amends this subsection.

"(5) Public disclosure required.—

"(A) In general.—The Corporation shall disclose documents referred to in paragraph (2)(A)(ii) upon request under section 552 of title 5, United States Code, without excising—

"(i) any portion under section 552(b)(5); or "(ii) any information about the insured depository institution under paragraph (4) of section 552(b), other than trade secrets, or paragraph (8) of that section.

"(B) EXCEPTION.—Subparagraph (A) does not require the Corporation to disclose the name of any customer of the insured depository institution (other than an institution-affiliated party), or information from which such a person's identity could be reasonably ascertained.

"(6) CLAIMS SETTLEMENT PROCEDURES.—The Corporation, in consultation with the other Federal banking agencies, shall establish procedures for resolving the claims of uninsured depositors and creditors other than depositors against a depository institution for which the Corporation has been appointed receiver. Such procedures shall—

"(A) ensure that insured depositors will have access to all insured funds as expeditiously as possible;

"(B) provide uninsured depositors and creditors other than depositors with early access to not more than 90 percent of the value of that portion of their claims that the Corporation determines is supported by the assets of the institution;

"(C) maintain the safety and effectiveness of the payments system; and

"(D) protect the stability of the deposit insurance system.".

SEC. 221. EARLY RESOLUTION.

(a) IN GENERAL.—It is the sense of the Senate that the Federal banking agencies should facilitate early resolution of troubled insured depository institutions whenever feasible if early resolution would have the least possible long-term cost to the deposit insurance fund, consistent with section 13(*l*) of the Federal Deposit Insurance Act (as added by section 220).

(b) GENERAL PRINCIPLES.—In encouraging the Federal banking agencies to pursue early resolution strategies, the Senate contemplates that any resolution transaction under section 13(c) of that Act would observe the following general principles:

(1) COMPETITIVE NEGOTIATION.—The transaction should be negotiated competitively, taking into account the value of expediting the process.

(2) RESULTING INSTITUTION ADEQUATELY CAPITALIZED.—Any insured depository institution created or assisted in the transaction (hereafter the "resulting institution") and any institution acquiring the troubled institution should be adequately capitalized, as defined in section 37 of the Federal Deposit Insurance Act (as added by section 205).

(3) SUBSTANTIAL PRIVATE INVESTMENT.—The transaction should involve substantial private investment.

(4) CONSOLIDATION.—The transaction should involve consolidation to the maximum extent consistent with section 13(*l*).

(5) CONCESSIONS.—Preexisting owners and debtholders of any troubled institution or its holding company should make substantial concessions.

(6) QUALIFIED MANAGEMENT.—Directors and senior management of the resulting institution should be qualified to perform their duties, and should not include individuals substantially responsible for the troubled institution's problems.

(7) FDIC's PARTICIPATION.—The transaction should give the Federal Deposit Insurance Corporation an opportunity to participate in the success of the resulting institution.

(8) STRUCTURE OF TRANSACTION.—The transaction should, insofar as practical, be structured so that—

(A) the Federal Deposit Insurance Corporation—

(i) does not acquire a significant proportion of the troubled institution's problem assets;

(ii) succeeds to the interests of the troubled institution's preexisting owners and debtholders in proportion to the assistance the Corporation provides; and

(iii) limits the Corporation's assistance in term and amount; and

(B) new investors share risk with the Corporation.

(c) REPORT.—Two years after the date of enactment of this Act, the Federal Deposit Insurance Corporation shall submit a report to Congress analyzing the effect of early resolution on the deposit insurance funds.

SEC. 222. FEDERAL RESERVE DISCOUNT WINDOW ADVANCES.

(a) REDESIGNATING SECTIONS 10(a) AND 10(b) OF THE FEDERAL RESERVE ACT.—The Federal Reserve Act (12 U.S.C. 221 et seq.) is amended—

(1) by redesignating section 10(a) (12 U.S.C. 347a) as section 10A; and

(2) by redesignating section 10(b) (12 U.S.C. 347b) as section 10B.

(b) LIMITATION ON LIQUIDITY LENDING FOR DEPOSIT INSURANCE PURPOSES.—Section 10B of the Federal Reserve Act (as redesignated by subsection (a)) is amended—

(1) by striking "Any Federal Reserve bank" and inserting "(a) IN GENERAL.—Any Federal Reserve bank"; and

(2) by adding at the end the following:

"(b) LIMITATIONS ON ADVANCES.—

"(1) LIMITATION ON EXTENDED PERIODS.—Except as provided in paragraph (2), no advances to any undercapitalized depository institution by any Federal Reserve bank under this section may be outstanding for more than 60 days in any 120-day period.

"(2) VIABILITY EXCEPTION.—

"(A) IN GENERAL.—If—

"(i) the head of the appropriate Federal banking agency certifies in advance in writing to the Federal Reserve bank that any depository institution is viable; or

"(ii) the Board conducts an examination of any depository institution and the Chairman of the Board certifies in writing to the Federal Reserve bank that the institution is viable, the limitation contained in paragraph (1) shall not apply during the 60-day period beginning on the date such certification is received.

"(B) EXTENSIONS OF PERIOD.—The 60-day period may be extended for additional 60-day periods upon receipt by the Federal Reserve bank of additional written certifications under subparagraph (A) with respect to each such additional period.

"(C) AUTHORITY TO ISSUE A CERTIFICATE OF VIABILITY MAY NOT BE DELEGATED.—The authority of the head of any agency to issue a written certification of viability under this paragraph may not be delegated to any other person.

"(D) EXTENDED ADVANCES SUBJECT TO PARAGRAPH (3).—Notwithstanding paragraph (1), an undercapitalized depository institution which does not have a certificate of viability in effect under this paragraph may have advances outstanding for more than 60 days in any 120-day period if the Board elects to treat—

"(i) such institution as critically undercapitalized under paragraph (3); and

"(ii) any such advance as an advance described in subparagraph (A)(i) of paragraph (3).

"(3) ADVANCES TO CRITICALLY UNDERCAPITALIZED DEPOSITORY INSTITUTIONS.—

"(A) LIABILITY FOR INCREASED LOSS.—Notwithstanding any other provision of this section, if—

"(i) in the case of any critically undercapitalized depository institution—

"(I) any advance under this section to such institution is outstanding without payment having been demanded as of the end of the 5-day period beginning on the date the institution becomes a critically undercapitalized depository institution; or

"(II) any new advance is made to such institution under this section after the end of such period; and

"(ii) after the end of that 5-day period, any deposit insurance fund in the Federal Deposit Insurance Corporation incurs a loss exceeding the loss that the Corporation would have incurred if it had liquidated that institution as of the end of that period,

the Board shall, subject to the limitations in subparagraph (B), be liable to the Federal Deposit Insurance Corporation for the excess loss, without regard to the terms of the advance or any collateral pledged to secure the advance.

"(B) LIMITATION ON EXCESS LOSS.—The liability of the Board under subparagraph (A) shall not exceed the lesser of the following:

"(i) The amount of the loss the Board or any Federal Reserve bank would have incurred on the increases in the amount of advances made after the 5-day period referred to in subparagraph (A) if those increased advances had been unsecured.

"(ii) The interest received on the increases in the amount of advances made after the 5-day period referred to in subparagraph (A).

"(C) FEDERAL RESERVE TO PAY OBLIGATION.—The Board shall pay the Federal Deposit Insurance Corporation the amount of any liability of the Board under subparagraph (A).

"(D) REPORT.—The Board shall report to the Congress on any excess loss liability it incurs under subparagraph (A), as limited by subparagraph (B)(i), and the reasons therefore, not later than 6 months after incurring the liability.

"(4) NO OBLIGATION TO MAKE ADVANCES.—A Federal Reserve bank shall have no obligation to make, increase, renew, or extend any advance or discount under this Act to any depository institution.

"(5) DEFINITIONS.—

"(A) APPROPRIATE FEDERAL BANKING AGENCY.—The term 'appropriate Federal banking agency' has the same meaning as in section 3 of the Federal Deposit Insurance Act.

"(B) CRITICALLY UNDERCAPITALIZED.—The term 'critically undercapitalized' has the same meaning as in section 37 of the Federal Deposit Insurance Act.

"(C) DEPOSITORY INSTITUTION.—The term 'depository institution' has the same meaning as in section 3 of the Federal Deposit Insurance Act.

"(D) UNDERCAPITALIZED DEPOSITORY INSTITUTION.—The term 'undercapitalized depository institution' means any depository institution which—

"(i) is undercapitalized, as defined in section 37 of the Federal Deposit Insurance Act; or

"(ii) has a composite CAMEL rating of 5 under the Uniform Financial Institutions Rating System (or an equivalent rating by any such agency under a comparable rating system) as of the most recent examination of such institution.

"(E) VIABLE.—A depository institution is 'viable' if the Board or the appropriate Federal banking agency determines, giving due regard to the economic conditions and circumstances in the market in which the institution operates, that the institution—

"(i) is not critically undercapitalized;

"(ii) is not expected to become critically undercapitalized; and

"(iii) is not expected to be placed in conservatorship or receivership.".

(c) BOARD'S AUTHORITY TO EXAMINE DEPOSITORY INSTITUTIONS AND AFFILIATES.—Section 11 of the Federal Reserve Act is amended by adding at the end the following:

"(n) To examine, at the Board's discretion, any depository institution, and any affiliate of such depository institution, in connection with any advance to, any discount of any instrument for, or any request for any such advance or discount by, such depository institution under this Act.".

(d) EFFECTIVE DATE.—The amendment made by subsection (b) shall take effect at the end of the 2-year period beginning on the date of enactment of this Act.

(e) CONFORMING AMENDMENTS REDESIGNATING SECTIONS 13a, 25(a), AND 25(b) OF THE FEDERAL RESERVE ACT.—The Federal Reserve Act (12 U.S.C. 221 et seq.) is amended—

(1) by redesignating section 13a (12 U.S.C. 348-52) as section 13A;

(2) by redesignating section 25(a) (12 U.S.C. 611-31) as section 25A; and

(3) by redesignating section 25(b) (12 U.S.C. 632) as section 25B.

SEC. 223. CROSS-GUARANTEE LIABILITY.

(a) IN GENERAL.—Section 5(e) of the Federal Deposit Insurance Act (12 U.S.C. 1815(e)) is amended—

(1) by amending the caption of the subsection to read as follows:

"(e) LIABILITY OF COMMONLY CONTROLLED DEPOSITORY INSTITUTIONS AND CONTROLLING COMPANIES FOR LOSSES TO CORPORATION.—";

(2) by amending subparagraph (A) of paragraph (1) to read as follows:

"(A) LIABILITY ESTABLISHED.—Any insured depository institution, any subsidiaries of that insured depository institution, and any controlling company shall be liable for any loss incurred by the Corporation, or any loss that the Corporation reasonably anticipates incurring, after the date of enactment of the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991—

"(i) in the case of an insured depository institution or any subsidiaries of that insured depository institution, in connection with—

"(I) the default of a commonly controlled insured depository institution; or

"(II) any assistance provided by the Corporation to a commonly controlled insured depository institution in danger of default; and

"(ii) in the case of a controlling company, in connection with—

"(I) the default of an insured depository institution controlled by such controlling company; or

"(II) any assistance provided by the Corporation to an insured depository institution in danger of default controlled by such controlling company.";

(3) by redesignating subparagraphs (B) and (C) of paragraph (1) as subparagraphs (C) and (D), respectively, and inserting the following after subparagraph (A):

"(B) LIMIT ON LIABILITY.—The aggregate liability of all controlling companies of an insured depository institution, other than insured depository institutions and subsidiaries of insured depository institutions, shall be not more than 5 percent of the insured depository institution's total assets at the time of the default or assistance described in subparagraph (A)."; and

(4) by adding at the end the following:

"(10) NO LIABILITY FOR CERTAIN AFFILIATES.—No affiliate of an insured depository institution, other than a controlling company or a commonly controlled depository institution (and any subsidiary of such insured depository institution), shall be liable, directly or indirectly, under this subsection.

"(11) LIABILITY NOT TO BE CONSTRUED AS CAPITAL MAINTENANCE COMMITMENT UNDER TITLE XI.—No liability under this subsection shall be deemed to be a commitment to maintain the capital of an insured depository institution under any provision of title 11, United States Code.

"(12) TRANSFER WITHIN ONE YEAR OF DEFAULT OR ASSISTANCE.—

"(A) PRESUMPTION.—Any transfer by a controlling company of an insured depository institution of assets to any affiliate that is not an insured depository institution, not more than 1 year before the insured depository institution controlled by such company defaults or receives assistance, shall be presumed to be an attempt to evade liability under this subsection and shall be invalid.

"(B) REBUTTABILITY.—If a controlling company described in subparagraph (A) transferred such assets on terms and under circumstances that would satisfy the standards of section 23B of the Federal Reserve Act as if the controlling company were a member bank, such transfer shall not be invalid under subparagraph (A).

"(C) REGULATIONS.—The Corporation may prescribe regulations to administer and carry out this paragraph."; and

(5) in paragraph (9)—

(A) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(B) by striking "COMMONLY CONTROLLED DEFINED.—" and inserting "DEFINITIONS.—

"(A) 'COMMONLY CONTROLLED'.—"; and

(C) by inserting at the end the following:

"(B) 'CONTROLLING COMPANY'.—For purposes of this subsection, the term 'controlling company' means any company having control of an insured depository institution.".

(b) CONFORMING AMENDMENTS.—Section 5(e) of the Federal Deposit Insurance Act (12 U.S.C. 1815(e)) is amended—

(1) in subparagraph (D) of paragraph (1), as redesignated, by inserting "and controlling company" after "insured depository institution";

(2) in subparagraph (E) of paragraph (1), as redesignated—

(A) by inserting "or controlling company" after "insured depository institution"; and

(B) by striking "institution" and inserting "insured depository institution or controlling company";

(3) in paragraph (2)(A)(ii)—

(A) by striking "commonly controlled insured depository institution" and inserting "insured depository institution or controlling company"; and

(B) by striking "commonly controlled depository institution's" and inserting "insured depository institution or controlling company's";

(4) in paragraph (2)(A)(iii) by striking "commonly controlled depository institution" and inserting "insured depository institution or controlling company";

(5) in paragraph (2)(B)(i)—

(A) by inserting "or controlling company" after "insured depository institution";

(B) by striking "such institution's" and inserting "such insured depository institution's or controlling company's"; and

(C) by inserting "controlled or" before "commonly controlled";

(6) in paragraph (2)(B)(ii)—

(A) by inserting "or controlling company" after "insured depository institution";

(B) by striking "such institution's" and inserting "such insured institution's or controlling company's"; and

(C) by inserting "controlled or" before "commonly controlled";

(7) in paragraph (2)(C)—

(A) by inserting "or controlling company" after "insured depository institution"; and

(B) by inserting "or controlling company" after "the depository institution" each place such term appears;

(8) in paragraph (2)(D)—

(A) by inserting "or controlling companies" after "depository institutions" each place such term appears; and

(B) by inserting "or controlling company" after "depository institution" each place such term appears;

(9) in paragraph (3)(B), by inserting "or controlling companies" after "commonly controlled depository institutions" each place such term appears in clauses (ii) and (iii);

(10) in paragraph (4)—

(A) by inserting "or controlling company" after "insured depository institution" each place such term appears;

(B) by inserting "or company's" after "institution's"; and

(C) by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively;

(11) in paragraph (5), by striking the catchline and inserting "(5) EXEMPTIONS.—";

(12) in paragraph (5)(A) by inserting "or controlling company" after "insured depository institution";

(13) in paragraph (5)(B)—

(A) by striking "and all other" and inserting ", all other";

(B) by inserting "and all affiliated controlling companies" after "such depository institution"; and

(C) by striking "regard to" and inserting "using the exemption contained in";

(14) in paragraph (7), by striking "Any depository institution shall not be treated as commonly controlled" and inserting "An affiliate shall have no liability";

(15) in paragraph (7)(A), by striking "1 depository institution controls another" and inserting "control was acquired";

(16) in paragraph (7)(B)—

(A) by striking "the controlling bank and all other insured depository institution affiliates of such controlling bank" and inserting "all insured depository institution affiliates"; and

(B) by striking "regard to" and inserting "using the exemption contained in"; and

(17) in paragraph (8), by inserting "or controlling company" after "depository institution" the first place such term appears.

(c) EXISTING LIABILITY NOT AFFECTED.—The amendments made by this section do not affect any liability to the Corporation under section 5(e) of the Federal Deposit Insurance Act, as in effect on the day before the date of enactment of this Act.

SEC. 224. GRANTING DEPOSIT INSURANCE.

Section 4 of the Federal Deposit Insurance Act (12 U.S.C. 1814) is amended—

(1) by striking subsection (b) and inserting the following:

"(b) CERTIFICATION BY OTHER BANKING AGENCIES.—

"(1) IN GENERAL.—Every national bank that is authorized to commence or resume the business of banking, and that is engaged in the business of receiving deposits other than trust funds, as herein defined, and every noninsured national nonmember bank that becomes a member of the Federal Reserve System, and every noninsured State bank that is converted into a national member bank or that becomes a member of the Federal Reserve System (except pursuant to section 9B of the Federal Reserve Act), and that is engaged in the business of receiving deposits other than trust funds as herein defined, shall be an insured depository institution, unless insurance is denied by the Board of Directors.

"(2) INSURED STATUS.—A depository institution shall be insured under paragraph (1) upon—

"(A) application to the Corporation; and

"(B) receipt by the Corporation of a certificate that is issued—

"(i) by the Office of the Comptroller of the Currency in the case of a national member bank that is authorized to commence or resume the business of banking or a State bank that is converted into a national member bank, and that meets the requirements of subsection (d); or

"(ii) by the Board of Governors of the Federal Reserve System in the case of a national nonmember bank or a State bank that becomes a member of the Federal Reserve System, and that meets the requirements of subsection (d).";

(2) by redesignating subsections (c) and (d) as subsections (i) and (j), respectively; and

(3) by inserting after subsection (b) the following new subsections:

"(c) Interim National Banking Associations.—In the case of any interim national bank that is chartered by the Office of the Comptroller of the Currency and will not open for business, the bank shall be an insured depository institution upon the issuance of the bank's charter by the Office of the Comptroller of the Currency.

"(d) Certificate Requirements.—Any certificate issued to the Corporation under subsection (b) shall state—

"(1) that the bank—

"(A) is authorized to transact the business of banking in the case of a national member bank; or

"(B) is a member of the Federal Reserve System in the case of a State bank that is converted into a national member bank, or a national nonmember bank or a State bank that becomes a member of the Federal Reserve System; and

"(2) that consideration has been given to the factors enumerated in section 6.

"(e) Review Requirements.—In reviewing any certificate and application referred to in subsection (b), the Board of Directors shall consider the factors described in paragraphs (1), (2), (3), (4), (5), and (7) of section 6 in determining whether to deny insurance.

"(f) Notice of Denial of Application.—If the Board of Directors, after giving due deference to the determination of the Comptroller of the Currency or the Board of Governors of the Federal Reserve System, as appropriate, with respect to the factors referred to in subsection (e), does not concur in the determination of the Comptroller or the Board of Governors, as appropriate, the Board of Directors shall promptly notify the Comptroller or the Board of Governors that insurance has been denied, giving specific reasons in writing for the Corporation's determination with reference to those factors, and no insurance shall be granted.

"(g) Voting Requirements.—The authority of the Board of Directors to make any determination to deny insurance under this subsection may not be delegated by the Board of Directors and any such determination may be made only upon a vote of not less than 3 members of the Board of Directors.

"(h) Continuation of Insurance Upon Becoming a Member Bank.—In the case of an insured bank that is admitted to membership in the Federal Reserve System or an insured State bank that is converted into a national member bank, the application and certificate referred to in subsection (b) shall not be required, and the bank shall continue as an insured bank.".

SEC. 225. DISCLOSURE BY INSURED DEPOSITORY INSTITUTIONS AND THE FEDERAL BANKING AGENCIES.

(a) Reports of Financial Condition by Insured Depository Institutions.—

(1) In general.—Section 7(a)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)(3)) is amended—

(A) by striking "(3)" and inserting the following:

"(3) Quarterly reports.—

"(A) In general.—"; and

(B) by inserting after subparagraph (A) the following:

"(B) ADDITIONAL INFORMATION.—In accordance with regulations prescribed by the appropriate Federal banking agency, the report of condition required by subparagraph (A) shall, in the case of banks with total assets of more than $1,000,000,000, also contain—

"(i) to the extent feasible, estimates of the aggregate market value of assets and liabilities and the resulting estimated net worth and supporting data and assumptions used in preparing the estimates; and

"(ii) disaggregated reports of assets, including participation in highly-leveraged transactions, holdings of noninvestment grade securities, commercial and industrial loans by sector, and other assets as specified by the appropriate Federal banking agency.

"(C) REPORT ON SECURITIES HOLDERS AND NONBANKING ACTIVITIES.—Each depository institution shall submit to the appropriate Federal banking agency, concurrently with the report required by subparagraph (A), a report containing—

"(i) the names of the holders of more than 5 percent of the insured institution's equity securities and the maximum amount of securities held by each such holder during the preceding quarter; and

"(ii) a description of activities conducted by the institution and its subsidiaries that are not permitted for national banks, with data on the magnitude of the activity.

"(D) PUBLIC ACCESS TO REPORTS.—Each appropriate Federal banking agency shall make reports required pursuant to this subsection available to the public upon request pursuant to section 552 of title 5, United States Code. The provisions of paragraphs (4) and (8) of section 552(b) of such title shall not apply to any such request. For the purpose of this subparagraph, beginning 75 days after the reporting date for such reports, section 552(a)(6)(A) of such title shall apply with respect to statistical information contained in those reports by substituting 'five' for 'ten' and section 552(a)(6)(B) shall not apply.".

(2) EFFECTIVE DATES.—The appropriate Federal banking agency shall promulgate final regulations requiring insured depository institutions to submit quarterly reports containing the information described in the amendments made by paragraph (1) effective for quarterly reports submitted for the quarter ending March 31, 1993.

(b) DISCLOSURE GUIDELINES.—The Federal Financial Institutions Coordination Council, in consultation with the Securities and Exchange Commission, shall facilitate the development of disclosure guidelines to carry out section 7(a)(3) of the Federal Deposit Insurance Act, as amended by subsection (a).

(c) REPORTS BY FEDERAL BANKING AGENCIES.—

(1) IN GENERAL.—Section 17 of the Federal Deposit Insurance Act (12 U.S.C. 1827) is amended by—

(A) redesignating subsections (b) through (g) as subsections (c) through (h); and

(B) inserting after subsection (a) the following new subsection:

"(b) REPORTS TO CONGRESS.—

"(1) IN GENERAL.—Each Federal banking agency shall submit an annual report to the Congress which shall contain, for all insured depository institutions for which the agency is the appropriate Federal banking agency—

"(A) estimates of the number and aggregate assets of institutions likely to fail during each of the 2 years following submission of the report and of the costs to the deposit insurance funds as a result of such failures, and supporting data and assumptions used in preparing the estimates;

"(B) a report on the conduct by institutions and their subsidiaries of activities not permitted for national banks or for bank holding companies, by State and Federal charter status;

"(C) a list of all cease-and-desist orders, supervisory agreements, and capital restoration plans entered into in the previous 12 months, and an analysis of the extent of compliance with outstanding orders, agreements, and plans; and

"(D) a report on the number and aggregate assets of institutions that are insolvent and insured depository institutions that are—

"(i) critically undercapitalized;

"(ii) significantly undercapitalized;

"(iii) undercapitalized;

"(iv) adequately capitalized; and

"(v) well capitalized,

assigning each institution to the single capital category that best describes the institution in accordance with the definitions established under section 37(b).

"(2) METHOD OF FILING.—Reports required by this subsection shall be submitted to the Congress in accordance with the requirements of subsection (a)(2) and shall be made available to the public.".

(2) EFFECTIVE DATE.—The reports required pursuant to the amendments made by paragraph (1) shall be filed annually, not later than March 1 of the following year.

(d) INSURANCE FUND REPORTS.—Section 17(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1827(a)(1)) is amended by—

(1) striking "and" at the end of subparagraph (E);

(2) striking the period at the end of subparagraph (F), and inserting a semicolon; and

(3) inserting after subparagraph (F) the following:

"(G) information pertaining to failed depository institutions, including—

"(i) the name and total assets of each insured depository institution that failed during the 12-month period preceding submission of the report, including those that received assistance under section 13(c), and the actual or estimated cost of resolution or assistance to each such depository institution;

"(ii) for each failed institution, the location by State, the State or Federal charter status, and Federal Reserve System membership status;

"(iii) a breakdown of the number and aggregate assets of all failed institutions by region, State or Federal charter status, and Federal Reserve System membership status; and

"(iv) a description of concentrations of liabilities and assets of failed institutions, including a breakdown by State or Federal charter status;

"(H) the number and aggregate assets of depository institutions on the problem bank list or any similar list that identifies institutions that may fail or require assistance or resolution within the foreseeable future, by State or Federal charter status and Federal Reserve System membership status, at the time of submission of the report;

"(I) an estimate of the number and aggregate assets of banks that are likely to be included on the problem bank list or other list described in subparagraph (H) in each of the 2 years following submission of the report, by State or Federal charter status and Federal Reserve System membership status, and supporting data and assumptions used in preparing the estimate; and

"(J) the estimated resolution and assistance costs which are likely to be expended in each of the 2 years following submission of the report, including an explanation of all data and assumptions used in developing estimates required by this paragraph.".

(e) Confidential Access to Information by CBO; GAO and CBO Reviews and Reports.—

(1) In general.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following:

"SEC. 39. REVIEW OF ESTIMATES; CONFIDENTIAL ACCESS TO CERTAIN INFORMATION.

"(a) In General.—The Comptroller General and the Congressional Budget Office shall review the estimates by the Corporation under subparagraphs (I) and (J) of section 17(a)(1) and by the appropriate Federal banking agencies under section 17(b)(1)(A).

"(b) Access to Information.—To carry out subsection (a), each appropriate Federal banking agency shall, upon request, provide the Director of the Congressional Budget Office—

"(1) the agency's internal rating system and each institution's rating; and

"(2) a list, identifying individual insured institutions, of those institutions which the agency believes may fail within the foreseeable future or which the agency believes may require assistance or resolution.

"(c) Safeguards Against Disclosure.—The provisions of subsections (c) and (d) of section 714 of title 31, United States Code, shall apply to any information provided in response to a request made by the Director of the Congressional Budget Office under subsection (b), except that for the purpose of this section any reference in such subsections to the Comptroller General or the General Accounting Office shall be deemed to be a reference to the Director of the Congressional Budget Office.".

(2) CRIMINAL PENALTIES FOR DISCLOSURE BY CBO EMPLOYEES.—Section 1906 of title 18, United States Code, is amended—

(A) by inserting "or a Congressional Budget Office employee with access to information obtained under section 39 of the Federal Deposit Insurance Act" after "title 31" the first place it appears; and

(B) by inserting "or to which information obtained under such section 37 pertains" after "title 31" the second place it appears.

(3) REVIEWS AND REPORTS.—Section 17(g) of the Federal Deposit Insurance Act (12 U.S.C. 1827(g)), as redesignated by subsection (b)(1)(A), is amended—

(A) by inserting "(1)" after "(g)"; and

(B) by adding at the end the following:

"(2) The Comptroller General shall review the oversight by the Federal banking agencies to determine whether reports of condition under section 7(a) require information to reasonably reflect the condition of depository institutions. The Comptroller General shall include in each report under paragraph (1) the results of such review and any recommendations to improve the reports so that—

"(A) the information required reasonably reflects the condition of depository institutions; and

"(B) the information provided facilitates regulatory actions, including prompt corrective action.

"(3) Each report under paragraph (1) shall also contain—

"(A) an audit of the failure estimates contained in the most recent reports under subparagraphs (I) and (J) of subsection (a)(1); and

"(B) an audit of the failure estimates contained in the most recent reports under subsection (b)(1).".

(f) THRIFT CALL REPORTS.—Section 5(v) of the Home Owners' Loan Act (12 U.S.C. 1464(v)) is amended—

(1) by amending paragraph (2) to read as follows:

"(2) PUBLIC DISCLOSURE.—Reports required under paragraph (1) and all information contained therein shall be available to the public upon request.";

(2) by striking paragraph (3); and

(3) by redesignating paragraphs (4) through (8) as paragraphs (3) through (7), respectively.

(g) FDIC ANNUAL AUDIT.—Section 17 of the Federal Deposit Insurance Act (12 U.S.C. 1827) is amended by striking subsections (e) through (h), as redesignated under section 219(b), and inserting the following:

"(e) AUDIT.—

"(1) IN GENERAL.—An annual audit of the financial transactions of the Bank Insurance Fund, the Savings Association Insurance Fund, and the FSLIC Resolution Fund, administered and maintained by the Corporation, shall be conducted, and reports on such audit shall be issued, in accordance with sections 9105 and 9106 of title 31, United States Code.

"(2) RECAPITALIZATION AUDIT.—An audit of the Corporation's compliance with any recapitalization schedule promulgated under subsection (b)(1)(C) that is in effect at the time of the audit required under paragraph (1) shall be made as part of such audit.

"(f) REPORT OF AUDIT.—A copy of the report on each audit conducted under subsection (d) shall be provided to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate at the time that it is provided to the Corporation.".

(h) GOVERNMENT CORPORATION TREATMENT.—Section 21A(b)(2) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(2)) is amended by striking "9105, 9107," and inserting "9107".

(i) RTC AUDIT COSTS.—Section 21A(k)(1)(A) of the Federal Home Loan Bank Act (12 U.S.C. 1441(k)(1)(A)) is amended by adding at the end the following: "The Corporation shall reimburse the Comptroller General for the full cost of any audit conducted under this paragraph, as determined by the Comptroller General. All reimbursements received under this paragraph by the Comptroller General shall be deposited in the Treasury as miscellaneous receipts.".

(j) RESOLUTION FUNDING CORPORATION AUDIT.—Section 21B(i)(2)(C) of the Federal Home Loan Bank Act (12 1441b(i)(2)(C)) is amended by inserting "or an independent external auditor" after "Comptroller General".

SEC. 226. CONSENT TO BE BOUND BY THE FEDERAL DEPOSIT INSURANCE ACT.

Section 1 of the Federal Deposit Insurance Act (12 U.S.C. 1811) (as amended by section 201) is amended by adding at the end the following new subsection:

"(c) INSURED DEPOSITORY INSTITUTIONS CONSENT TO BE BOUND BY THIS ACT.—By becoming or remaining insured under this Act, an insured depository institution consents to be bound by this Act and by other Federal statutes relating to the safety and soundness of insured depository institutions.".

SEC. 227. DISCLOSURE BY UNINSURED DEPOSITORY INSTITUTIONS.

(a) IN GENERAL.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following new section:

"SEC. 40. DISCLOSURE BY UNINSURED DEPOSITORY INSTITUTIONS.

"(a) DISCLOSURE REQUIRED.—Any depository institution the deposits of which are not insured by the Corporation under this Act or by the National Credit Union Share Insurance Fund shall, within the United States, do the following:

"(1) PERIODIC STATEMENTS; ACCOUNT RECORDS.—Include conspicuously in all periodic statements of account, on each signature card, and on each passbook, certificate of deposit, or similar instrument evidencing a deposit notice substantially as follows:

" '[NAME OF INSTITUTION] IS NOT FEDERALLY INSURED

" 'If [name of institution] fails, the Federal Government does not guarantee that you will be able to get back any of your money.'

"(2) ADVERTISING; PREMISES.—Include conspicuously in all advertising and at each place where deposits are normally received a notice substantially as follows:

" '[NAME OF INSTITUTION] IS NOT FEDERALLY INSURED'.

"(3) ACKNOWLEDGMENT OF RISK.—Receive deposits only for the account of persons who have signed an acknowledgment of risk providing substantially as follows:

" 'ACKNOWLEDGMENT OF RISK

" 'I have been warned that [name of institution] is not federally insured.

" 'I understand that if [name of institution] fails, the Federal Government does not guarantee that I will get back any of my money.'

"(b) MANNER AND CONTENT OF DISCLOSURE.—To ensure that current and prospective customers understand the risks involved in foregoing Federal deposit insurance, the Corporation, by regulation or order, shall prescribe the manner and content of disclosure required under subsection (a).

"(c) EXCEPTIONS FOR INSTITUTIONS NOT RECEIVING RETAIL DEPOSITS.—The Corporation may, by regulation or order, make exceptions to subsection (a) for any depository institution that, within the United States, does not receive initial deposits of less than $100,000 from individuals who are citizens or residents of the United States, other than money received in connection with any draft or similar instrument issued to transmit money.

"(d) DEPOSITORY INSTITUTION DEFINED.—For purposes of this section, the term 'depository institution' includes any entity described in section 19(b)(1)(A)(iv) of the Federal Reserve Act, or any entity that, as determined by the Board of Directors—

"(1) is engaged in the business of receiving deposits; and

"(2) could reasonably be mistaken for a depository institution by the entity's current or prospective customers.

"(e) ENFORCEMENT.—Compliance with the requirements of this section, and any regulation prescribed or order issued under this section, shall be enforced under section 8 in the same manner and to the same extent as if the depository institution were an insured State nonmember bank.".

(b) CONFORMING AMENDMENTS.—Section 28 of the Federal Deposit Insurance Act (12 U.S.C. 1831e) is amended—

(1) by striking subsection (h); and

(2) by redesignating subsection (i) as subsection (h).

(c) NATIONAL CREDIT UNION ADMINISTRATION'S AUTHORITY TO ENFORCE DISCLOSURE BY UNINSURED CREDIT UNIONS.—Section 206 of the Federal Credit Union Act (12 U.S.C. 1786) is amended by adding at the end the following:

"(t) ENFORCING CERTAIN DISCLOSURE BY UNINSURED CREDIT UNIONS.—Compliance with the requirements of section 39 of the Federal Deposit Insurance Act, and any regulation prescribed or order issued under that section, may be enforced under section 206 in the case of a credit union in the same manner and to the same extent as if the credit union were an insured credit union.".

(d) Effective Date.—The amendments made by this section shall become effective 120 days after the date of enactment of this Act.

SEC. 228. UNINSURED WHOLESALE BANKS.

(a) Voluntarily Terminating Insured Status.—

(1) Section 8 designations.—Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) is amended—

(A) in the section heading, by inserting "**INVOLUNTARY**" after "**SEC. 8.**"; and

(B) in subsection (a)—

(i) by striking paragraph (1); and

(ii) by redesignating paragraphs (2) through (9) as paragraphs (1) through (8), respectively.

(2) Voluntarily terminating insured status.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting after section 8 the following new section:

"SEC. 8A. VOLUNTARILY TERMINATING STATUS AS INSURED DEPOSITORY INSTITUTION.

"(a) In General.—Except as provided in subsection (b), an insured bank may, in accordance with regulations of the Corporation, voluntarily terminate its status as an insured depository institution if the institution provides written notice of its intent to terminate its insured status—

"(1) to the Corporation, not less than 6 months before the effective date of the termination; and

"(2) to its depositors, not less than 6 months before the effective date of the termination.

"(b) Exception.—The option to terminate insured status under subsection (a) shall not be available to—

"(1) an insured savings association;

"(2) an insured branch that is required to be insured under subsection (a) or (b) of section 6 of the International Banking Act of 1978; or

"(3) any institution described in section 2(c)(2) of the Bank Holding Company Act of 1956.

"(c) Eligibility for Insurance Terminated.—A depository institution that voluntarily elects to terminate its insured status under subsection (a) shall not receive insurance any of its deposits or any other assistance authorized under this Act after the period specified in subsection (e)(1).

"(d) Institution Must Become Uninsured State Member Bank or Terminate Deposit-Taking Activities.—Any institution that voluntarily terminates its status as an insured depository institution under this section may not, upon termination of insurance, accept any deposits unless the institution is an uninsured State member bank under section 9B of the Federal Reserve Act.

"(e) Exit Fees.—

"(1) In general.—Any institution that voluntarily terminates its status as an insured depository institution under this section shall pay an exit fee in an amount that the Corporation determines is sufficient to account for the institution's pro rata share of contingent and other liabilities of the relevant deposit insurance fund.

"(2) **Procedures.**—The Corporation shall, by regulation, prescribe procedures for assessing any exit fee under this subsection.

"(f) **Temporary Insurance of Deposits Insured as of Termination.**—

"(1) **Transition period.**—The insured deposits of each depositor in an insured bank on the effective date of the voluntary termination of the institution's insured status, less all subsequent withdrawals from any deposits of such depositor, shall continue to be insured for a period of not less than 6 months nor more than 2 years, within the discretion of the Corporation. During that period, no additions to any such deposits, and no new deposits in the depository institution made after the effective date of the termination, shall be insured by the Corporation, and no early withdrawal penalties shall be charged on insured deposits with a term that exceeds the transition period provided by the Corporation under this paragraph.

"(2) **Temporary assessments; obligations and duties.**—During the period specified in paragraph (1), a depository institution shall—

"(A) continue to pay assessments required under this Act as if it were an insured depository institution;

"(B) be subject to the authority of the Corporation and the duties and obligations of an insured depository institution under this Act; and

"(C) if the depository institution is closed due to an inability to meet the demands of its depositors, be subject to the same powers and rights of the Corporation with respect to the institution as in the case of an insured depository institution.

"(g) **Advertising.**—

"(1) **In general.**—An insured bank that voluntarily terminates its insured status under this section shall not advertise or hold itself out as having insured deposits, except that it may advertise the temporary insurance of deposits under subsection (f) if in the same connection, it shall also state with equal prominence—

"(A) that additions to deposits and new deposits made after the effective date of the termination are not insured; and

"(B) the date on which all insurance will terminate, as determined under subsection (f)(1).

"(2) **Certificates of deposit, obligations, and securities.**—Any certificate of deposit or other obligation or security issued by an insured bank after the effective date of the voluntary termination of its insured status under this section shall include a conspicuous notice that the instrument is not insured under this Act.

"(h) **Notice Requirements.**—

"(1) **Notice to the corporation.**—The notice to the Corporation of an institution's intent to terminate its insured status required under subsection (a) shall be in such form as the Corporation may require.

"(2) NOTICE TO DEPOSITORS.—The notice to depositors of an institution's intent to terminate its insured status required under subsection (a) shall be—

"(A) at such depositor's last address of record with the institution; and

"(B) in such manner and form as the Corporation finds to be necessary and appropriate to protect depositors.".

(3) APPROPRIATE FEDERAL BANKING AGENCY.—Section 3(q)(2)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)(2)(A)) is amended by inserting "and any uninsured State member bank" before the comma.

(b) AMENDMENTS TO THE BANK HOLDING COMPANY ACT OF 1956.—

(1) EXEMPTION.—Section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843) is amended by adding at the end the following new subsection:

"(j) SPECIAL EXEMPTION FOR HOLDING COMPANIES OF UNINSURED BANKS.—

"(1) EXEMPTION.—Except as provided in paragraph (2), if all of a bank holding company's subsidiary depository institutions are uninsured State member banks, as provided in section 9B of the Federal Reserve Act, that bank holding company may, notwithstanding subsection (a), acquire or retain direct or indirect ownership or control of—

"(A) shares of securities firms;

"(B) shares described in paragraphs (1) through (7) and (9) through (14) of subsection (c); and

"(C) shares of any company, the activities of which the Board, by regulation or order, has determined to be—

"(i) closely related to banking under subsection (c)(8); or

"(ii) financial, and appropriate for a bank holding company that is subject to this subsection.

"(2) SAVINGS PROVISION.—In the case of a bank holding company having control of any bank that voluntarily terminates its insured status under section 8A of the Federal Deposit Insurance Act, paragraph (1) shall not apply before the date on which all of the deposits of such bank cease to be insured in accordance with the transition period described in section 8A(f)(1) of the Federal Deposit Insurance Act.

"(3) APPROVAL REQUIRED.—

"(A) IN GENERAL.—The acquisition or retention of shares referred to in paragraph (1)(B) shall be subject to the same requirements, including any applicable Board approval or review, as would be applicable to a bank holding company that does not own any uninsured State member banks;

"(B) NONBANKING ACTIVITIES.—

"(i) PRIOR NOTICE REQUIRED.—No acquisition may be made under subparagraph (A) or (C) of paragraph (1) unless the company has provided the Board not less than 60 days prior written notice of the transaction, and during that period, the Board has not disapproved the transaction.

"(ii) EXTENSION FOR NEW ACTIVITIES.—Notwithstanding clause (i), in any case involving an activity for which the Board has not yet made a determination under paragraph (1)(C), the Board may extend the disapproval period for not more than an additional 90 days.

"(4) LIMITATION ON AFFILIATION OF UNINSURED STATE MEMBER BANKS AND OTHER DEPOSIT-TAKING INSTITUTIONS.—No uninsured State member bank may be an affiliate of—

"(A) any bank, other than an uninsured State member bank;

"(B) any savings association;

"(C) any institution described in section 2(c)(2); or

"(D) any institution that accepts initial deposits of $100,000 or less, other than—

"(i) on an incidental basis; and

"(ii) if the deposits—

"(I) are not insured under the Federal Deposit Insurance Act; and

"(ii) are not more than 5 percent of the institution's total deposits.".

(2) DEFINITIONS.—Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 184) is amended—

(A) by adding at the end the following:

"(n) UNINSURED STATE MEMBER BANK.—For purposes of this Act, the term 'uninsured State member bank' means any institution that is an uninsured State member bank in accordance with section 9B of the Federal Reserve Act."; and

(B) in subsection (c)(1), by adding at the end the following:

"(C) An uninsured State member bank.".

(c) EXEMPTIONS FOR NONINSURED BANKS AND THEIR AFFILIATES.—

(1) MCFADDEN ACT.—Section 5155(h) of the Revised Statutes (12 U.S.C. 36(h)) is amended by adding at the end the following: "For purposes of this section, such terms shall not include banks that have voluntarily terminated their insured status under section 8A of the Federal Deposit Insurance Act, effective upon the expiration of the transition period provided for in subsection (f)(1) of such section.".

(2) BANKING ACT OF 1933.—Section 32 of the Banking Act of 1933 (12 U.S.C. 78) is amended by adding at the end the following: "This section does not prohibit any officer, director, partner, employee, or individual described in the preceding sentence from serving at the same time as an officer, director, or employee of an uninsured State member bank, as defined in section 9B of the Federal Reserve Act.".

(3) INSURED BANKS.—Section 3(e) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(e)) is amended by adding at the end the following: "This subsection does not apply to an uninsured State member bank that is controlled by a company that controls no banks other than uninsured State member banks.".

(d) UNINSURED STATE MEMBER BANKS.—The Federal Reserve Act (12 U.S.C. 221 et seq.) is amended by inserting after section 9A the following new section:

"SEC. 9B. UNINSURED STATE MEMBER BANKS.

"(a) APPLICATION FOR MEMBERSHIP AS UNINSURED STATE MEMBER BANK.—

"(1) APPLICATION REQUIRED.—Any bank organized under the general laws of any State, or incorporated by special law of any State, may apply to the Board of Governors of the Federal Reserve System to subscribe to the stock of the Federal Reserve bank organized within the district where the applying bank is located as an uninsured State member bank. Such application shall be treated as an application under, and shall be subject to, section 9.

"(2) APPROVAL OF MEMBERSHIP.—No bank may become an uninsured State member bank unless—

"(A) the Board has approved an application by the bank, under such regulations and subject to such restrictions or requirements as the Board may prescribe, to be an uninsured State member bank; and

"(B) in the case of a bank that is insured under the Federal Deposit Insurance Act, the bank has met all requirements under that Act for voluntary termination of deposit insurance.

"(b) GENERAL REQUIREMENTS APPLICABLE TO UNINSURED STATE MEMBER BANKS.—

"(1) FEDERAL RESERVE ACT.—Except as otherwise provided in this section, uninsured State member banks shall be member banks and shall be subject to the provisions of this Act that apply to member banks to the same extent and in the same manner as State member insured banks, except that an uninsured State member bank may terminate membership under this Act only with the Board's prior written approval, and on terms and conditions that the Board determines are appropriate to carry out this Act.

"(2) PROMPT CORRECTIVE ACTION.—An uninsured State member bank shall be deemed to be an insured depository institution for purposes of section 37 of the Federal Deposit Insurance Act except that—

"(A) the relevant capital levels and capital measures for each capital category shall be those specified by the Board for uninsured State member banks under subsection (c);

"(B) the provisions applicable to well-capitalized insured depository institutions shall be inapplicable to uninsured State member banks;

"(C) the provisions authorizing or requiring a receiver to be appointed for an institution shall not apply to an uninsured State member bank, and the Board is authorized or required (as the case may be) to terminate the uninsured State member bank's membership in the Federal Reserve System; and

"(D) for purposes of applying section 37 of the Federal Deposit Insurance Act to uninsured State member banks, all references in that section to the appropriate Federal banking agency or to the Corporation shall be deemed to be references to the Board.

"(3) Enforcement authority.—Subsections (j) and (k) of section 7, subsections (b) through (n), (s), (u), and (v) of section 8, and section 19 of the Federal Deposit Insurance Act shall apply to an uninsured State member bank in the same manner and to the same extent as they apply to State member insured banks.

"(4) International lending supervision act.—For purposes of the International Lending Supervision Act, an uninsured State member bank shall be deemed to be a banking institution and the Board shall be the appropriate Federal banking agency for the bank and all of its affiliates.

"(5) Bank merger act.—An uninsured State member bank shall be subject to the Bank Merger Act in the same manner and to the same extent as if the uninsured State member bank were a State member insured bank.

"(c) Specific Requirements Applicable to Uninsured State Member Banks.—

"(1) Limitations on deposits.—

"(A) Minimum amount.—Pursuant to regulations of the Board, no uninsured State member bank shall receive initial deposits of $100,000 or less, other than—

"(i) on an incidental basis; and

"(ii) if such deposits are not more than 5 percent of the institution's total deposits.

"(B) No deposit insurance.—Deposits at an uninsured State member bank are not insured deposits under the Federal Deposit Insurance Act.

"(C) Advertising and disclosure.—The Board shall prescribe regulations pertaining to advertising and disclosure by uninsured State member banks to ensure that such a bank notifies each depositor that deposits at the uninsured State member bank are not insured or otherwise guaranteed by the United States Government.

"(2) Special capital requirements applicable to uninsured state member banks.—

"(A) Minimum capital levels.—

"(i) In general.—The Board shall, by regulation, adopt capital requirements for uninsured State member banks. The capital levels for uninsured State member banks shall be sufficiently higher than the capital levels for State member insured banks—

"(I) to account for the status of uninsured State member banks as institutions that accept deposits that are not insured under the Federal Deposit Insurance Act; and

"(II) to provide for the safe and sound operation of the uninsured State member bank without undue risk to creditors or other persons, including Federal Reserve banks, engaged in transactions with the bank.

"(ii) Relevant capital measures.—The relevant capital measures for uninsured State member banks shall be the relevant capital measures described in section 37(c) of the Federal Deposit Insurance Act, except that the Board may specify different relevant capital measures applicable to uninsured State member banks than those applicable to insured depository institutions, as the Board determines appropriate to carry out this Act.

"(iii) MINIMUM LEVERAGE RATIO.—The minimum ratio of tangible equity to total assets of uninsured State member banks shall be not less than 150 percent of the corresponding ratio for insured State member banks.

"(B) CAPITAL CATEGORIES FOR PROMPT CORRECTIVE ACTION.—

"(i) IN GENERAL.—For purposes of applying section 37 of the Federal Deposit Insurance Act, the Board shall, by regulation, establish, for each relevant capital measure specified by the Board under subparagraph (A)(ii), the levels at which an uninsured State member bank is adequately capitalized, undercapitalized, and significantly undercapitalized by reference to the relevant minimum capital levels established for uninsured State member banks.

"(ii) CRITICAL CAPITAL LEVEL.—The Board shall, by regulation, establish the critical capital level for uninsured State member banks for purposes of section 37 of the Federal Deposit Insurance Act. The ratio shall not be less than 150 percent of the corresponding ratio for insured State member banks.

"(3) NONINTEREST-BEARING DEPOSIT.—Each uninsured State member bank shall maintain on deposit at the Federal Reserve bank in the district in which the member bank is located, a noninterest-bearing deposit in such amount of the uninsured State member bank's total deposits as the Board may prescribe. That deposit shall be in addition to any reserve, clearing balance, or liquidity requirements otherwise applicable to the uninsured State member bank.

"(4) ADDITIONAL REQUIREMENTS APPLICABLE TO UNINSURED STATE MEMBER BANKS.—In addition to any requirements otherwise applicable to State member banks or otherwise applicable under this section, the Board may, by regulation or order, for uninsured State member banks—

"(A) establish a special discount rate above the rate applicable to insured depository institutions;

"(B) limit transactions with affiliates to prevent an affiliate from gaining access to, or the benefits of, credit (including overdrafts) from a Federal Reserve bank;

"(C) establish special clearing balance requirements;

"(D) limit the availability and use of credit, and on the frequency of borrowing, from a Federal Reserve bank, including limitations or prohibitions on overdrafts at a Federal Reserve bank;

"(E) limit or condition the use of payment or payment-related services obtained from any Federal Reserve bank; and

"(F) establish any additional requirements that the Board determines to be appropriate or necessary to—

"(i) promote the safety and soundness of the uninsured State member bank, or

"(ii) protect creditors and other persons, including Federal Reserve banks, engaged in transactions with the uninsured State member bank.

"(5) Exemptions for uninsured State member banks.—The Board may, by regulation or order, exempt any uninsured State member bank from any provision applicable to a State member bank that is not an uninsured State member bank, provided that the Board finds that such exemption is not inconsistent with—

"(i) promoting the safety and soundness of the uninsured State member bank, and

"(ii) protecting creditors and other persons, including Federal Reserve banks, engaged in transactions with the uninsured State member bank.

"(6) No effect on other provisions.—This section shall not be construed to limit the Board's authority over member banks under any other provision of law, or to create any obligation for any Federal Reserve bank to make, increase, renew, or extend any advance or discount under this Act to any member bank or other depository institution.

"(d) Conservatorship Authority.—The Board may appoint a conservator to take possession and control of an uninsured State member bank to the same extent and in the same manner as the Comptroller of the Currency is authorized to appoint a conservator for a national bank under section 203 of the Bank Conservation Act.

"(e) Definitions.—For purposes of this section—

"(1) the term 'uninsured State member bank' means a bank whose application to become an uninsured State member bank has been approved by the Board of Governors of the Federal Reserve System under this section; and

"(2) the term 'State member insured bank' means a State member bank, the deposits of which are insured under the Federal Deposit Insurance Act.".

SEC. 229. STUDY AND REPORT ON CORE BANKING.

(a) Congressional Commission on Core Banking.—The Speaker of the House of Representatives and the Majority Leader of the Senate, in consultation with the Minority Leaders of the House and the Senate, shall appoint a Congressional Commission on Core Banking (hereinafter referred to as the "Commission") to review all major policy issues regarding core banking in order to assist the Congress in evaluating the potential effect of core banking proposals.

(b) Membership.—The Commission shall consist of 9 members, 5 to be appointed by the Speaker of the House of Representatives, and 4 to be appointed by the Majority Leader of the Senate. The Commission shall include—

(1) 1 representative each from the Department of the Treasury, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation;

(2) 1 representative of organizations whose members consist of depository institutions insured by the Federal Deposit Insurance Corporation;

(3) 1 representative of consumer and public interest groups whose members are customers of such institutions;

(4) 3 independent banking experts; and

(5) 1 representative of the private sector who shall be designated Chairman of the Commission.

(c) Purpose of the Commission.—The Commission shall evaluate the potential effect of core banking proposals on—

(1) the health and profitability of banks;

(2) limiting the scope of deposit insurance;

(3) the Bank Insurance Fund;

(4) credit availability;

(5) risk-taking;

(6) the flow of funds through banks, lending and loan losses, and deposit and loan spreads;

(7) industry consolidation; and

(8) institution size.

(d) Core Banking Proposals Defined.—For purposes of this section, the Commission shall examine core banking proposals that include—

(1) limits on the interest rates that may be paid on deposits;

(2) limits on loans to 1 borrower that are more stringent than the limits under current law;

(3) net exposure limits; and

(4) changes in the bank holding company structure necessary to implement core banking.

(e) Report.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit a report to the President and the Congress with recommendations regarding core banking proposals.

(f) Authorization.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 230. PRIORITY OF CLAIMS.

(a) In General.—Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended by adding at the end the following:

"(s) Priority of Certain Claims.—

"(1) In general.—Subject to paragraph (2), in any proceeding brought by the Corporation, any claim acquired under this section or section 12 or 13 against an insured depository institution's director, officer, employee, agent, attorney, accountant, appraiser, or any other person employed by or providing services to an insured depository institution shall have priority over any claim against that person by a depositor, creditor, or shareholder of the insured depository institution other than a claim by another Federal agency or the United States.

"(2) Notification.—

"(A) In general.—If the Corporation receives written notice that a depositor, creditor, or shareholder of an insured depository institution has asserted a claim in a proceeding described in paragraph (1), a claim of the Corporation shall not have priority under paragraph (1) unless the Corporation—

"(i) not later than 180 days after receiving the notice (or if the Corporation acquires its claim after receipt of the notice, not later than 180 days after acquiring the claim)—

"(I) files with the court a statement that the Corporation intends to pursue its claim; and

"(II) diligently pursues that claim; and

"(ii) files suit not later than 1 year after receiving the notice (or, if the Corporation acquires its claim after receiving the notice, not later than 1 year after acquiring the claim), unless the court extends that period in accordance with subparagraph (B).

"(B) REQUESTS FOR EXTENSIONS.—

"(i) IN GENERAL.—At the Corporation's request, the court shall extend the period for the Corporation to file suit, unless the court finds that granting the extension would result in prejudice to a person's ability to prove the person's claim that would outweigh any harm to the Government resulting from denial of the extension.

"(ii) CONSIDERATION OF CORPORATION'S DILIGENCE.—In making a finding under clause (i), the court shall consider the Corporation's diligence in investigating its claim.

"(3) EFFECT OF PRIORITY.—

"(A) IN GENERAL.—The Corporation's priority shall apply to—

"(i) the prosecution of any suit, claim, or cause of action; and

"(ii) the execution of any judgment resulting from that claim.

"(B) LIMITATION.—Paragraph (1) does not give the Corporation priority as to an asset adjudicated to be unavailable to satisfy any judgment resulting from the Corporation's claim.".

(b) APPLICABILITY.—The amendment made by subsection (a) shall not apply to any claim of a depositor, creditor, or shareholder commenced before the date of enactment of this Act.

TITLE III—INTERSTATE BANKING AND BRANCHING

SEC. 301. INTERSTATE BANKING.

(a) IN GENERAL.—Section 3(d) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(d)) is amended—

(1) by striking "(d) Notwithstanding any other provision of this section, no" and inserting the following:

"(d) STATE BOUNDARIES.—

"(1) IN GENERAL.—Except as provided in paragraph (1), no"; and

(2) by adding at the end the following:

"(2) APPROVALS AUTHORIZED.—

"(A) ACQUISITION OF EXISTING BANKS.—Beginning 1 year after the date of enactment of the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991, the Board may approve an application under this section which will permit a bank holding company that is adequately capitalized and adequately managed, or a subsidiary thereof, to acquire, directly or indirectly, any voting shares of, interest in, or all or substantially all of the assets of a bank located outside the State in which the operations of such bank holding company's banking subsidiaries were principally conducted on July 1, 1966, or the date on which such company became a bank holding company, whichever is later.

"(B) ESTABLISHMENT OF NEW BANKS.—Beginning 2 years after the date of enactment of the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991, the Board may approve an application under this section which will permit a bank holding company that is adequately capitalized and adequately managed, or a subsidiary thereof, to charter and acquire any voting shares of, interest in, or all or substantially all of the assets of any new bank to be located outside the State in which the operations of such bank holding company's banking subsidiaries were principally conducted on July 1, 1966, or the date on which such company became a bank holding company, whichever is later.

"(C) 'NEW BANK' EXCEPTION.—For purposes of this paragraph, a bank that does not open for business and has been chartered solely for the purpose of acquiring all or substantially all of the assets of an existing bank shall not be deemed to be a new bank.

"(3) CONCENTRATION LIMITS.—The Board may not approve an application under paragraph (2)(A) if—

"(A) the applicant controls, or upon completion of the acquisition would control, more than 10 percent of the insured depository institution assets of the United States, as determined under regulations of the Board; or

"(B) the applicant controls, or upon completion of the acquisition would control, 30 percent or more of the insured depository institution deposits in the State in which the bank to be acquired is located, as determined under regulations of the Board, except that a State may waive the applicability of this subparagraph.

Nothing in this paragraph affects the applicability of Federal antitrust laws or of State antitrust laws that do not discriminate against out-of-State bank holding companies.

"(4) DEFINITIONS.—For the purposes of this subsection, the term 'adequately capitalized' has the same meaning as in section 37 of the Federal Deposit Insurance Act, and the term 'insured depository institution' has the same meaning as in section 3 of that Act.".

(b) Conversion of Banks to Branches.—Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) is amended by adding at the end the following subsection:

"(h) Interstate Combination.—

"(1) In general.—A bank holding company having subsidiary banks located in more than one State may combine two or more of such banks into a single bank by means of merger, consolidation, or other transaction on or after June 1, 1993, except that a bank may not be so combined or remain so combined if it is located in a State that has elected to prohibit out-of-State banks from establishing and acquiring branches in that State. Notwithstanding the exception in the preceding sentence, a bank holding company may engage in such a combination on or after the date of enactment of this subsection if the holding company is undercapitalized and the transaction is approved as part of a capital restoration plan described in paragraph (2)(B).

"(2) Applicability.—Paragraph (1) applies only in the case of a merger, consolidation, or other transaction that is undertaken—

"(A) by a bank holding company that is adequately capitalized, as defined in section 37 of the Federal Deposit Insurance Act; or

"(B) in connection with a comprehensive capital restoration plan under section 37 of the Federal Deposit Insurance Act that contains at least 1 element in addition to the merger, consolidation, or other transaction described in paragraph (1).

"(3) Intrastate branching.—Nothing in paragraph (1) shall be deemed to authorize—

"(A) a national bank to operate branches at locations in a State unless a national bank having offices only in such State could operate its main office or branches at such locations; or

"(B) a State bank to operate branches at locations in a State unless a State bank having branches only in such State could operate its main office or branches at such locations.".

SEC. 302. INTERSTATE BRANCHING BY NATIONAL BANKS.

Section 5155 of the Revised Statutes (12 U.S.C. 36) is amended—

(1) by redesignating subsections (d) through (h) as subsections (e) through (i), respectively; and

(2) by inserting after subsection (c) the following:

"(d) Interstate Branching by National Banks.—

"(1) In general.—

"(A) Approvals authorized.—Beginning 3 years after the date of enactment of the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991, the Comptroller of the Currency may approve an application under this section which will permit a national bank that is adequately capitalized and adequately managed to establish or acquire, and operate, a branch located outside the State in which the main office of such bank is located.

"(B) Conditions.—In determining whether to grant approval under subparagraph (A), the Comptroller of the Currency shall consider the bank's rating under the Community Reinvestment Act of 1977 and the views of the appropriate State bank officials regarding the bank's compliance with applicable State community reinvestment laws.

"(C) Applicable law.—

"(i) In general.—Any branch established or acquired under subparagraph (A) shall be subject to the laws of the host State with respect to intrastate branching, consumer protection, fair lending, and community reinvestment as if it were a branch of a bank chartered by that State, unless such State law is preempted by Federal law regarding the same subject. Such State laws shall be enforced, with respect to branches of national banks, by the Comptroller of the Currency. The tax laws of the host State shall apply and may be enforced by that State as if the branch were a national bank located in that State. However, the authority for a bank to branch interstate under this subsection shall not provide a basis for, nor affect the authority of, a State where a branch is located to impose taxes upon the income or capital of any State or national bank, or an affiliate thereof, located in or chartered by any other State. Nothing contained in this subsection in any way affects, limits, impairs, or precludes the right of any State or political subdivision of a State to impose a nondiscriminatory franchise tax or other nonproperty tax instead of a franchise tax as provided by section 3124 of title 31, United States Code.

"(ii) Filing requirement.—A host State may require any national bank that has its main office in another State that wishes to establish a branch within the host State to comply with filing requirements that are not discriminatory in nature and that are similar in their effect to those that are imposed on a corporation from another State that is not engaged in the business of banking and that seeks to engage in business in the host State. The host State may preclude any national bank the main office of which is located in another State from establishing or operating a branch within the host State if that national bank or its branch materially fails to comply with the filing requirements.

"(2) State election to prohibit interstate branching.—

"(A) In general.—The provisions of paragraph (1) shall not apply to branches to be located in a State which has enacted, during the period beginning on January 1, 1990, and ending on the expiration of 3 years after the date of enactment of this subsection, a law that applies equally to national and State banks and that expressly prohibits all out-of-State banks from establishing or acquiring branches located in that State.

"(B) EFFECT OF PROHIBITION.—A national bank that has its main office in a State that has in effect a prohibition under subparagraph (A) may not acquire or establish a branch located in any other State under the provisions of this subsection.

"(3) STATE ELECTION TO PERMIT INTERSTATE BRANCHING.—

"(A) DURING THE THREE-YEAR PERIOD FOLLOWING ENACTMENT.—The Comptroller of the Currency may approve an application under paragraph (1)(A) before the expiration of the 3-year period described in paragraph (1)(A), if the State in which the branch will be located enacts a law during that period expressly permitting interstate branching by all out-of-State national and State banks before the expiration of the time period described in paragraph (1)(A). A State that enacts a law described in the preceding sentence—

"(i) may prohibit interstate de novo branching during the 5-year period after the date of enactment of the Comprehensive Deposit Insurance and Taxpayer Protection Act of 1991;

"(ii) may require a copy of an application submitted under this section to be filed with the host State banking authority in a timely manner (and the Comptroller of the Currency shall consider any timely comments of the host State prior to approving that application); and

"(iii) may impose other conditions on an incoming branch if—

"(I) the conditions do not discriminate against out of State banks or bank holding companies; and

"(II) the imposition of the conditions is not preempted by Federal law regarding the same subject.

"(B) AFTER THE THREE-YEAR PERIOD FOLLOWING ENACTMENT.—A State that originally elected, pursuant to paragraph (2), to prohibit interstate branching may nonetheless elect at any later time to permit interstate branching if such State enacts a law expressly permitting interstate branching by all out-of-State national and State banks.

"(4) CONCENTRATION LIMITS.—

"(A) IN GENERAL.—The Comptroller may not approve an acquisition under paragraph (1)(A) by a bank of a branch located in another State if—

"(i) the bank controls, or upon completion of the acquisition would control, more than 10 percent of the insured depository institution assets of the United States, as determined under regulations of the Board of Governors of the Federal Reserve System; or

"(ii) the bank controls, or upon completion of the acquisition would control, 30 percent or more of the insured depository institution deposits in the State in which the branch to be acquired is located, as determined under regulations of the Board of Governors of the Federal Reserve System, except that a State may waive the applicability of this subparagraph.

"(B) LIMITATIONS.—Nothing in subparagraph (A)—

"(i) affects the applicability of Federal antitrust laws or of State antitrust laws that do not discriminate against out-of-State banks or bank holding companies, or

"(ii) applies to the establishment of new branches located outside the State where the main office of the bank is located.

"(5) DEFINITIONS.—For purposes of this subsection—

"(A) ADEQUATELY CAPITALIZED.—The term 'adequately capitalized' has the meaning given such term by section 37 of the Federal Deposit Insurance Act.

"(B) HOST STATE.—The term 'host State' means the State in which a national bank establishes or maintains a branch other than the State in which the bank has its main office and is engaging in banking business.

"(C) INSURED DEPOSITORY INSTITUTION.—The term 'insured depository institution' has the same meaning as in section 3 of the Federal Deposit Insurance Act.".

SEC. 303. INTERSTATE BRANCHING BY STATE BANKS.

Section 18(d) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d)) is amended by adding at the end the following:

"(3) INTERSTATE BRANCHING BY STATE BANKS.—Beginning 3 years after the date of enactment of the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991, an insured State bank that is adequately capitalized and adequately managed may establish or acquire, and operate, a branch located outside the State in which the bank is chartered if authorized by the law of the State in which the bank is chartered, subject to paragraphs (5) and (7).

"(4) APPLICABLE LAW.—

"(A) IN GENERAL.—Any branch of an out-of-State bank shall be subject to the laws of the host State with respect to intrastate branching, consumer protection, fair lending, and community reinvestment as if it were a branch of a bank chartered by that State. The tax laws of the host State shall apply and may be enforced by that State as if the branch were a bank chartered by that State. However, the authority for a bank to branch interstate under this subsection shall not provide a basis for, nor affect the authority of, a State where a branch is located to impose taxes upon the income or capital of any State or national bank, or an affiliate thereof, located in or chartered by any other State. Nothing contained in this subsection in any way affects, limits, impairs, or precludes the right of any State or political subdivision of a State to impose a nondiscriminatory franchise tax or other nonproperty tax instead of a franchise tax as provided by section 3124 of title 31, United States Code.

"(B) ACTIVITIES OF BRANCHES.—An insured State bank that establishes a branch or branches pursuant to paragraph (3) may not conduct any activity at such branch that is not permissible for a bank chartered by the host State.

"(C) FILING REQUIREMENT.—A host State may require any bank chartered by another State that wishes to establish a branch within the host State to comply with filing requirements that are not discriminatory in nature and that are similar in their effect to those that are imposed on a corporation from another State that is not engaged in the business of banking and that seeks to engage in business in the host State. The host State may preclude any State bank chartered by another State from establishing or operating a branch within the host State if that State bank or its branch materially fails to comply with the filing requirements.

"(D) RESERVATION OF CERTAIN RIGHTS TO STATES.—Nothing in this subsection limits in any way the right of a State to—

"(i) determine the authority of State banks chartered in that State to establish and maintain branches; or

"(ii) supervise, regulate, and examine State banks chartered by that State.

"(5) STATE ELECTION TO PROHIBIT INTERSTATE BRANCHING.—

"(A) IN GENERAL.—The provisions of paragraph (3) shall not apply to branches to be located in a State which has enacted, during the period beginning on January 1, 1990, and ending on the expiration of 3 years after the date of enactment of this subsection, a law that applies equally to national and State banks and that expressly prohibits all out-of-State banks from establishing or acquiring branches located in that State.

"(B) EFFECT OF PROHIBITION.—A State bank that is chartered by a State that has in effect a prohibition under subparagraph (A) may not acquire or establish a branch located in any other State.

"(6) STATE ELECTION TO PERMIT INTERSTATE BRANCHING.—

"(A) DURING THE THREE-YEAR PERIOD FOLLOWING ENACTMENT.—A State bank may establish or acquire, and operate, a branch outside the State in which the main office of the bank is located, subject to the provisions of this subsection, before the expiration of the 3-year period described in paragraph (3), if the State in which the branch will be located enacts a law during that period expressly permitting interstate branching by all national and State banks before the expiration of the time period described in paragraph (3). A State that enacts such a law—

"(i) may prohibit interstate de novo branching during the 5-year period beginning on the date of enactment of the Comprehensive Deposit Insurance and Taxpayer Protection Act of 1991;

"(ii) may require a copy of an application submitted under this section to be filed with the host State banking authority in a timely manner (and the home State banking authority and the appropriate Federal banking agency shall consider any timely comments of the host State prior to approving that application); and

"(iii) may impose other conditions on an incoming branch if—

"(I) the conditions do not discriminate against out of State banks or bank holding companies; and

"(II) the imposition of the conditions is not preempted by Federal law regarding the same subject.

"(B) AFTER THE THREE-YEAR PERIOD FOLLOWING ENACTMENT.—A State that originally elected, pursuant to paragraph (5), to prohibit interstate branching may nonetheless elect at any later time to permit interstate branching if such State enacts a law expressly permitting interstate branching by all national and State banks.

"(7) CONCENTRATION LIMITS.—

"(A) IN GENERAL.—Notwithstanding the provisions of this subsection, a State bank may not acquire an existing branch located in another State if—

"(i) the bank controls, or upon completion of the acquisition would control, more than 10 percent of the insured depository institution assets of the United States, as determined under regulations of the Board of Governors of the Federal Reserve System; or

"(ii) the bank controls, or upon completion of the acquisition would control, 30 percent or more of the insured depository institution deposits in the State in which the branch to be acquired is located, as determined under regulations of the Board of Governors of the Federal Reserve System, except that a State may waive the applicability of this subparagraph.

"(B) LIMITATIONS.—Nothing in subparagraph (A)—

"(i) affects the applicability of Federal antitrust laws or of State antitrust laws that do not discriminate against out-of-State bank holding companies, or

"(ii) applies to the establishment of new branches located outside the State where the main office of the bank is located.

"(8) COORDINATION OF EXAMINATION AUTHORITY.—

"(A) IN GENERAL.—A host State bank supervisory or regulatory authority may examine a branch established in the host State by banks chartered by another State for the purpose of determining compliance with host State laws regarding banking, taxation, community reinvestment, fair lending, consumer protection, and permissible activities and to ensure that the activities of the branch are conducted in a manner consistent with sound banking principles and do not constitute a serious risk to the safety and sound operation of the branch.

"(B) ENFORCEMENT.—In the event that a host State bank authority as described in subparagraph (A) determines that there is a violation of host State law concerning the activities being conducted by the branch or that the branch is being operated in a manner not consistent with sound banking principles or in an unsafe and unsound manner, such host State bank authority may undertake such enforcement actions or proceedings as would be permitted under host State law if the branch in question were a bank chartered by that host State.

"(C) COOPERATIVE AGREEMENT.—The State bank authorities from one or more States are authorized to enter into cooperative agreements to facilitate State regulatory supervision of State banks, including cooperative agreements relating to the coordination of examinations and joint participation in examinations.

"(D) FEDERAL REGULATORY AUTHORITY.—

"(i) IN GENERAL.—Nothing in this subsection limits in any way the authority of the appropriate Federal banking agency to examine any bank or branch of a bank for which the agency is the appropriate Federal banking agency.

"(ii) REVIEW OF INTERSTATE AGREEMENTS.—If the appropriate Federal banking agency determines that the States have failed to reach an agreement under subparagraph (C), or that such an agreement fails to adequately protect the Federal Deposit Insurance Fund, the appropriate Federal banking agency shall not defer to State examinations of the out-of-State branches.

"(9) DEFINITIONS.—For purposes of this subsection—

"(A) HOST STATE—The term 'host State' means the State in which a bank establishes or maintains a branch other than the State in which the bank is chartered and engaging in banking business.

"(B) ADEQUATELY CAPITALIZED.—For the purposes of this subsection, the term 'adequately capitalized' has the meaning given such term by section 37 of the Federal Deposit Insurance Act.".

SEC. 304. COMMUNITY REINVESTMENT ACT EVALUATION OF BANKS WITH INTERSTATE BRANCHES.

(a) IN GENERAL.—Section 807 of the Community Reinvestment Act of 1977 (12 U.S.C. 2906) is amended by adding the following subsections:

"(d) INSTITUTIONS WITH INTERSTATE BRANCHES.—

"(1) STATE-BY-STATE EVALUATION.—In the case of a regulated financial institution that maintains domestic branches in 2 or more States, the appropriate Federal financial supervisory agency shall prepare—

"(A) a written evaluation of the entire institution's record of performance under this title, as required by subsections (a), (b), and (c) of this section; and

"(B) for each State in which the institution maintains 1 or more domestic branches, a separate written evaluation of the institution's record of performance within such

State under this title, as required by subsections (a), (b), and (c) of this section.

"(2) MULTISTATE METROPOLITAN AREAS.—In the case of a regulated financial institution that maintains domestic branches in 2 or more States within a multistate metropolitan area, the appropriate Federal financial supervisory agency may prepare a separate written evaluation of the institution's record of performance within such metropolitan area under this title, as required by subsections (a), (b), and (c) of this section. If the agency prepares a written evaluation pursuant to this paragraph, the scope of the written evaluation required under paragraph (1)(B) shall be adjusted accordingly.

"(3) CONTENT OF STATE LEVEL EVALUATION.—A written evaluation prepared pursuant to paragraph (1)(B) of this subsection shall—

"(A) present the information required by subparagraphs (A) and (B) of subsection (b)(1) of this section separately for each metropolitan area in which the institution maintains 1 or more domestic branch offices and separately for the remainder of the nonmetropolitan area of the State if the institution maintains 1 or more domestic branch offices in such area; and

"(B) describe how the Federal financial supervisory agency has performed the examination of the institution, including a list of the individual branches examined.

"(4) DEFINITIONS.—For purposes of this section:

"(A) DOMESTIC BRANCH.—The term 'domestic branch' means any branch office or other facility of a regulated financial institution with the ability to accept deposits located in any State.

"(B) METROPOLITAN AREA.—The term 'metropolitan area' means any primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area as defined by the Director of the Office of Management and Budget, with a population of 250,000 or more, and any other area identified by the appropriate Federal financial supervisory agency.

"(C) STATE.—The term 'State' has the same meaning as provided in section 3(a) of the Federal Deposit Insurance Act.".

(b) SEPARATE PRESENTATION.—Section 807(b)(1) of the Community Reinvestment Act of 1977 (12 U.S.C. 2906(b)(1)) is amended by adding at the end the following sentence:

"A written evaluation shall contain the information required by subparagraphs (A) and (B) presented separately for each metropolitan area in which an insured depository institution maintains one or more domestic branch offices.".

SEC. 305. BRANCHING BY FOREIGN BANKS.

(a) IN GENERAL.—Section 5(a) of the International Banking Act of 1978 (12 U.S.C. 3103(a)) is amended to read as follows:

"(a) INTERSTATE BANKING OPERATIONS.—

"(1) IN GENERAL.—A foreign bank may establish and operate—

"(A) a Federal branch or agency, with the approval of the Board and the Comptroller of the Currency, in any State outside its home State to the extent that such establishment and operation would be permitted under section 5155 of the Revised Statutes for a national bank; or

"(B) a State branch or agency, with the approval of the Board and the appropriate regulatory authority of the State, in any State outside its home State to the extent that such establishment and operation would be permitted under section 18(d) of the Federal Deposit Insurance Act for a State bank,

as if the foreign bank were a national bank having its main office, or a State bank chartered, in the home State of the foreign bank.

"(2) CRITERIA FOR DETERMINATION.—In approving an application under paragraph (1), the Board and the Comptroller of the Currency—

"(A) shall apply the standards for establishment of a foreign bank office in the United States under section 7(e); and

"(B) may not approve an application unless it determines that the foreign bank's financial resources, including the capital level, are equivalent to those required for a domestic bank to be approved for branching under section 5155 of the Revised Statutes and section 18(d) of the Federal Deposit Insurance Act and, in the case of the first branching application by such foreign bank, after consultation with the Secretary of the Treasury regarding capital equivalency.

"(3) REQUIREMENT FOR A SEPARATE SUBSIDIARY.—If the Comptroller of the Currency or the Board, taking into account differing regulatory or accounting standards, finds that adherence to capital requirements equivalent to those imposed under section 5155 of the Revised Statutes and by section 18(d) of the Federal Deposit Insurance Act can be verified only if banking activities are carried out in a domestic banking subsidiary within the United States, it may approve an application under paragraph (1) subject to a requirement that the foreign bank or company controlling the foreign bank establish a domestic banking subsidiary in the United States.".

(b) TREATMENT OF UNITED STATES BANKING SUBSIDIARIES.—Section 5 of the International Banking Act of 1978 (12 U.S.C. 3103) is amended by adding at the end the following:

"(d) TREATMENT OF UNITED STATES SUBSIDIARY OF A FOREIGN BANK.—A foreign bank that has a domestic subsidiary within the United States may establish Federal and State branches and agencies outside its home State to the extent permitted under section 5155(d) of the Revised Statutes and section 18(d) of the Federal Deposit Insurance Act.".

(c) DEPOSIT INSURANCE REQUIREMENT.—

(1) IN GENERAL.—Section 6 of the International Banking Act of 1978 (12 U.S.C. 3104) is amended—

(A) by designating subsection (b) as subsection (b)(1);

(B) by redesignating the last undesignated paragraph as paragraph (2); and

(C) by adding at the end the following subsection:

"(c) DEPOSIT INSURANCE REQUIREMENT.—Notwithstanding subsections (a) and (b), if any branch of a foreign bank maintains retail deposit accounts with balances of less than $100,000 or is or becomes an insured branch, all branches of such foreign bank shall be subject to the requirements of section 7 of the Federal Deposit Insurance Act, and the deposits of such branch shall be insured to the same extent as an insured branch in accordance with that Act. Any foreign bank that has 1 or more insured branches shall establish 1 or more banking subsidiaries in the United States to conduct all of its insured deposit-taking activities.".

(2) APPLICABILITY.—The requirement contained in section 6(c) of the International Banking Act of 1978, as amended by paragraph (1), shall apply to a branch of a foreign bank that was established before the date of enactment of this Act upon the expiration of 1 year after the date of enactment.

(d) HOME STATE.—

(1) METHOD OF DETERMINING.—Section 4(h) of the International Banking Act of 1978 (12 U.S.C. 3102(h)) is amended—

(A) by striking the phrase "in the State in which such branch or agency is located"; and

(B) by adding at the end the following sentence: "For the purposes of section 5155(c) of the Revised Statutes (12 U.S.C. 36(c)), the home State of a foreign bank shall be its home State as determined under section 5(c).".

(2) SINGLE STATE DETERMINATIONS.—Section 5(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 3103(c)) is amended to read as follows:

"(c) DETERMINATION OF HOME STATE OF FOREIGN BANK.—For the purposes of this section—

"(1) the home State of a foreign bank that has branches, agencies, subsidiary commercial lending companies, or subsidiary banks, or any combination thereof, in more than one State, is the 1 of those States elected of the foreign bank, or, in default of such election, by the Board; and

"(2) the home State of a foreign bank that has branches, agencies, subsidiary commercial lending companies, or subsidiary banks, or any combination thereof, in only one State, is that State.".

SEC. 306. STATE TAX COMPLIANCE.

Section 5240 of the Revised Statutes (12 U.S.C. 484) is amended by adding at the end the following:

"(c) Notwithstanding subsection (a), lawfully authorized auditors, examiners, and other representatives acting on behalf of the State agency or agencies charged with the administration and collection of taxes imposed by a State or political subdivision thereof, may, at reasonable times, review the books, records, and accounts of a depository institution, chartered under Federal law, to determine any tax liability and to ensure compliance with the tax laws of a State or political subdivision thereof.".

SEC. 307. USE OF NAMES IN HOST STATE.

(a) Bank Holding Company Act of 1956.—Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842), as amended by section 301, is amended by adding at the end the following:

"(i) Use of Names in Host State.—

"(1) In general.—A bank holding company that seeks, directly or indirectly, to acquire or establish a bank in a host State shall provide the Board with the name or names under which the bank will operate in the host State.

"(2) Prohibition against same or similar names.—A bank holding company may not operate a bank in a host State if the proposed name of the bank is—

"(A) identical or deceptively similar to a name being used by an existing bank or bank holding company in the host State; or

"(B) is likely to cause the public to be confused, deceived, or mistaken, due to a similarity or identity of names.

"(3) Subsequent use of same or similar name.—Upon application by any person or institution that is adversely affected, the Board shall revoke permission of a bank holding company to operate a bank in a host State if the bank holding company uses or changes the name of, or uses an additional name for any of its banks in the host State, and the new or additional name is described in subparagraph (A) or (B) of paragraph (2). The preceding sentence does not preclude any adversely affected person from pursuing any available legal or administrative remedies.

"(4) Definition.—For purposes of this subsection, the term 'host State' means the State in which a bank holding company establishes or acquires a bank other than the State in which the operations of the bank holding company's banking subsidiaries were principally conducted on July 1, 1996, or the date on which the company became a bank holding company, whichever is later.".

(b) National Banks.—Section 5155(d) of the Revised Statutes (12 U.S.C. 36(d)), as added by section 302, is amended by adding at the end the following:

"(6) Use of names in host state.—

"(A) In general.—A bank that seeks, directly or indirectly, to acquire or establish a branch in a host State shall provide the Comptroller of the Currency with the name or names under which the branch will operate in the host State.

"(B) Prohibition against same or similar names.—A bank may not operate a branch in a host State if the proposed name of the branch is—

"(i) identical or deceptively similar to a name being used by an existing bank or bank holding company in the host State; or

"(ii) is likely to cause the public to be confused, deceived, or mistaken, due to a similarity or identity of names.

"(C) Subsequent use of same or similar name.—Upon application by any person or institution that is adversely affected, the Comptroller of the Currency shall revoke permission of a bank to operate a branch in a host State if the bank uses or changes the name of, or uses an additional name for any such branch in the host State, and the new or additional name is described in clause (i) or (ii) of subparagraph (B). The preceding sentence does not preclude any adversely affected person from pursuing any available legal or administrative remedies.

"(D) DEFINITION.—For purposes of this paragraph, the term 'host State' means the State in which a bank establishes or acquires a branch other than the State in which the bank has its main office and is engaging in the business of banking.".

(c) FEDERAL DEPOSIT INSURANCE ACT.—Section 18(d) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d)), as amended by section 303, is amended by adding at the end the following:

"(10) USE OF NAMES IN HOST STATE.—

"(A) IN GENERAL.—A bank that seeks, directly or indirectly, to acquire or establish a branch in a host State shall provide the appropriate State regulatory authority with the name or names under which the branch will operate in the host State.

"(B) PROHIBITION AGAINST SAME OR SIMILAR NAMES.—A bank may not operate a branch in a host State if the proposed name of the branch is—

"(i) identical or deceptively similar to a name being used by an existing bank or bank holding company in the host State; or

"(ii) is likely to cause the public to be confused, deceived, or mistaken, due to a similarity or identity of names.

"(C) SUBSEQUENT USE OF SAME OR SIMILAR NAME.—Upon application by any person or institution that is adversely affected, the appropriate State regulatory authority may revoke permission of a bank to operate a branch in a host State if the bank uses or changes the name of, or uses an additional name for any such branch in the host State, and the new or additional name is described in clause (i) or (ii) of subparagraph (B). The preceding sentence does not preclude any adversely affected person from pursuing any available legal or administrative remedies.

"(D) DEFINITION.—For purposes of this paragraph, the term 'host State' means the State in which a bank establishes or acquires a branch other than the State in which the bank has its main office and is engaging in the business of banking.".

TITLE IV—REGULATORY RESTRUCTURING

Subtitle A—Restructuring Board of Directors of FDIC

SEC. 401. RESTRUCTURING THE BOARD OF DIRECTORS OF THE FEDERAL DEPOSIT INSURANCE CORPORATION.

(a) MEMBERSHIP.—Section 2(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1812(a)(1)) is amended to read as follows:

"(1) IN GENERAL.—The management of the Corporation shall be vested in a Board of Directors consisting of 5 members—

"(A) 3 of whom shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals who are citizens of the United States;

"(B) 1 of whom shall be the Chairman of the Board of Governors of the Federal Reserve System; and

"(C) [RESERVED].".

(b) TERMS.—Section 2(c) of the Federal Deposit Insurance Act (12 U.S.C. 1812(c)) is amended—

(1) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(2) by striking paragraph (1) and inserting the following:

"(1) APPOINTED MEMBERS.—Except as provided in paragraph (2), each appointed member of the Board of Directors shall be appointed for a term of 6 years.

"(2) STAGGERED APPOINTMENTS.—Of the first members of the Board of Directors to be appointed under subsection (a)(1)(A) after the date of enactment of the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991—

"(A) 1 shall be appointed for a term to expire on February 28, 1993;

"(B) 1 shall be appointed for a term to expire on February 28, 1995; and

"(C) 1 shall be appointed for a term to expire on February 28, 1997,

as designated by the President at the time of the appointment.".

Subtitle B—Depository Institutions Coordination

SEC. 411. IMPROVING COORDINATION AMONG FEDERAL BANKING AGENCIES.

(a) IN GENERAL.—The Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3301 et seq.) is amended by striking sections 1001 through 1006 and inserting the following:

"SEC. 1001. SHORT TITLE.

"This title may be cited as the 'Federal Financial Institutions Coordination Council Act of 1991'.

"SEC. 1002. PURPOSES.

"The purposes of this title are—

"(1) to establish a Federal Financial Institutions Coordination Council which shall establish uniform supervisory and examination policies, procedures, and report forms for the Federal examination and supervision of depository institutions by the Federal banking agencies; and

"(2) to ensure consistency and progressive and vigilant supervision in such examination and supervision.

"SEC. 1003. DEFINITIONS.

"As used in this title—

"(1) the term 'appropriate Federal banking agency' has the same meaning as in section 3 of the Federal Deposit Insurance Act;

"(2) the term 'Council' means the Federal Financial Institutions Coordination Council, as established under section 1004(a);

"(3) the term 'Federal banking agencies' has the same meaning as in section 3 of the Federal Deposit Insurance Act;

"(4) the term 'depository institution' means a bank, a savings bank, a trust company, a savings association, a building and loan association, a homestead association, a cooperative bank, a bank holding company, or a savings and loan holding company; and

"(5) the term 'depository institution organization' means a depository institution and its affiliates, as that term is defined in section 2(k) of the Bank Holding Act of 1956.

"SEC. 1004. FEDERAL FINANCIAL INSTITUTIONS COORDINATION COUNCIL.

"(a) Establishment; Composition.—There is established the Federal Financial Institutions Coordination Council, which shall consist of—

"(1) the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation;

"(2) the Chairman of the Board of Governors of the Federal Reserve System; and

"(3) [RESERVED].

"(b) Delegation of Authority.—A member of the Council described in paragraph (1), (2), or (3) of subsection (a) may delegate his or her authority or responsibilities as a member of the Council to a member of the Board of Directors of the Federal Deposit Insurance Corporation or the Board of Governors of the Federal Reserve System, respectively, if such delegatee is not otherwise a member of the Council.

"(c) Chairman.—The members of the Council shall select the first Chairman of the Council. Thereafter the chairmanship shall rotate among the members of the Council.

"(d) Term.—The term of the Chairman of the Council shall be 2 years.

"(e) Majority Vote.—Actions taken and reports filed by the Council shall be approved by a majority vote of the Council members.

"(f) COMPENSATION AND EXPENSES.—Each member of the Council shall serve without compensation but shall be entitled to reasonable expenses incurred in carrying out his official duties as such a member.

"SEC. 1005. EXPENSES OF THE COUNCIL.

"The costs and expenses of the Council, including the salaries of its employees, shall be shared equally by each of the Federal banking agencies. Annual assessments for such share shall be levied by the Council, based upon its projected budget for the year, and additional assessments may be made during the year, if necessary to meet such costs and expenses.

"SEC. 1006. FUNCTIONS OF COUNCIL.

"(a) UNIFORM POLICIES AND PROCEDURES.—

"(1) IN GENERAL.—The Council shall—

"(A) establish uniform policies and procedures to be used by the Federal banking agencies as minimum standards in the examination of depository institutions; and

"(B) coordinate supervisory policies and procedures among such agencies.

"(2) CONSOLIDATED SUPERVISORY EFFORT.—In establishing the policies and procedures referred to in paragraph (1), the Council shall ensure a consolidated supervisory effort for a depository institution organization for which there is more than one appropriate Federal banking agency.

"(3) SUPERVISION OF INTERSTATE BRANCHES.—In establishing the policies and procedures referred to in paragraph (1), the Council shall ensure that interstate activities and branches of depository institutions are subject to the same level of examination and supervision as if those interstate activities and branches were conducted solely intrastate.

"(4) IMPLEMENTATION.—The Council shall take such steps as are necessary to ensure that consolidated supervisory efforts are implemented for depository institution organizations by January 1, 1993.

"(b) UNIFORM REPORTING SYSTEMS AND PROCEDURES.—

"(1) IN GENERAL.—The Council shall establish uniform reporting systems and procedures to be used by the Federal banking agencies in carrying out their examination and supervisory functions.

"(2) IMPLEMENTATION.—The Council shall take such steps as are necessary to ensure that uniform reporting systems and procedures used by the Federal banking agencies by January 1, 1993.

"(c) PAPERWORK REDUCTION.—The Council shall seek to simplify and reduce duplicative or unnecessary report and filing requirements for depository institutions, consistent with ensuring that the Federal banking agencies have sufficient information to fully examine, supervise, and regulate depository institutions, in accordance with the respective authority of each such agency.

"(d) EFFECT ON RESEARCH AND DEVELOPMENT.—Nothing in this title shall be construed to limit or discourage Federal banking agency research and development of new depository institutions supervisory methods and tools, nor to preclude the field testing of any innovation devised by any Federal banking agency.".

(b) EXAMINATION IMPROVEMENT.—The Federal Financial Institutions Coordination Council Act of 1991 (12 U.S.C. 3301, et seq.), as amended by subsection (a), is amended by adding at the end the following:

"SEC. 1012. TRAINING PROGRAM FOR EXAMINERS.

"(a) ESTABLISHMENT.—The Council, in consultation with the Federal banking agencies, shall—

"(1) develop a program, including an appropriate course of studies, for initial and continuing training of bank examiners hired by those agencies; and

"(2) carry out the training program for all examiners of those agencies.

"(b) PARTICIPATION IN PROGRAM.—

"(1) IN GENERAL.—Any examiner hired on or after January 1, 1993, by a Federal banking agency shall be required to attend and satisfactorily complete the training program established pursuant to subsection (a).

"(2) EXPERIENCE CREDIT.—The Council may, in its discretion, allow previous work or education experience to substitute for the requirement of paragraph (1) if the examiner has clearly demonstrated thorough knowledge of the content of the training program established pursuant to paragraph (1).

"(c) ADDITIONAL TRAINING.—The Federal banking agencies may each develop and carry out supplemental training programs for examiners to develop particular examination capabilities appropriate to each agency's own regulatory needs. Each such agency may require examiners employed by it to attend and satisfactorily complete such programs.

"(d) ENROLLMENT.—The training program established under paragraph (1) shall be open to enrollment by employees of the National Credit Union Administration, the Federal Housing Finance Board, and State financial institutions supervisory agencies. Such agencies shall reimburse the Council for the Council's costs incurred in providing training to their employees.

"SEC. 1013. EXAMINATION IMPROVEMENT PROGRAM.

"(a) UNIFORM EXAMINATION IMPROVEMENT PROGRAM.—Each Federal banking agency, in consultation with the Council, shall establish a comparable examination improvement program that meets the requirements of subsection (b).

"(b) PROGRAM CRITERIA.—An examination improvement program shall meet the requirements of this subsection if under such program the Federal banking agency—

"(1) reviews the organization of its staff responsible for conducting examinations of depository institutions and makes such improvements in the organization of its staff as it determines to be appropriate to ensure frequent, objective, and thorough examinations of depository institutions;

"(2) increases, to the extent necessary, the number of examiners, supervisors, and other individuals it employs in connection with conducting or supervising the examination of depository institutions, to ensure frequent, objective, and thorough examinations of depository institutions;

"(3) reviews the training of its staff responsible for conducting examinations of depository institutions and makes such improvements in the training of its staff as it determines to be appropriate to ensure frequent, objective, and thorough examinations of depository institutions; and

"(4) supervises and develops career paths for its staff responsible for conducting examinations of depository institutions to reduce turnover among such staff.

"SEC. 1014. EXAMINATION COORDINATION PROGRAM.

"(a) In General.—Each appropriate Federal banking agency shall—

"(1) establish a schedule of examinations of each depository institution for which it is the appropriate Federal banking agency; and

"(2) notify any other Federal banking agency with examination responsibility for that depository institution of the schedule.

In scheduling examinations under this subsection, the appropriate Federal banking agency shall consult other Federal banking agencies and attempt to arrive at a schedule that is mutually acceptable.

"(b) Coordination.—Each appropriate Federal banking agency shall coordinate the examination of each depository institution for which it is the appropriate Federal banking agency with other Federal banking agencies that have examination responsibilities for the institution. An agency that fails to participate in the examination schedule under subsection (a)(1) shall use the results of such examination until the next examination is scheduled.

"(c) State Agency Participation.—The appropriate Federal banking agency for each depository institution shall notify the State banking supervisory agency, if any, of examinations scheduled under subsection (a)(1), and shall invite its participation in the coordinated examination under this section.

"(d) Multiagency Examination Teams Permissible.—In order to carry out subsection (a), the Federal banking agencies may formulate joint examination teams consisting of not less than 1 member from each such agency for the purpose of examining 1 or more depository institutions.

"(e) Emergency Examination Authority.—Notwithstanding subsection (a) or (b), each Federal banking agency may conduct an examination of any depository institution under its own authority at any time and not in coordination with other agencies if such agency, in its sole discretion, has reason to believe that—

"(1) the condition of the depository institution may be deteriorating;

"(2) an institution-affiliated party or depository institution, directly or indirectly, has or is about to violate—

"(A) a law or regulation within the agency's jurisdiction;

"(B) a cease and desist order issued by the agency that has become final;

"(C) a condition imposed in writing by the agency; or

"(D) a written agreement between such depository institution and such agency; or

"(3) the depository institution may have engaged or participated in an unsafe or unsound practice.

"(f) Emergency Special Examination Authority.—Notwithstanding subsection (a) or (b), each Federal banking agency may conduct a special examination of any depository institution at any time and not in coordination with other agencies if such agency, in its sole discretion, has reason to believe it is necessary to obtain information—

"(1) regarding any violation of law or unsafe or unsound banking practice by any institution or institution-affiliated party within its jurisdiction;

"(2) not contained in the most current examination report; or

"(3) otherwise necessary to carry out the agency's supervisory, regulatory, or lending responsibilities.

"SEC. 1015. REPORTS TO THE CONGRESS.

"Not later than April 1 of each year, the Council shall prepare and publish an annual report that discusses its activities during the preceding year concerning its establishment under section 1006 of uniform policies and procedures to be used by Federal banking agencies in the examination and supervision of depository institutions, including efforts made by the Council to develop consolidated supervision for depository institution organizations.".

(c) Council Administration Amendments.—The Federal Financial Institutions Coordination Council Act of 1991 (12 U.S.C. 3301 et seq.), as amended by subsections (a) and (b), is amended in section 1008—

(1) in subsection (b), by striking "in addition" and inserting "In addition"; and

(2) in paragraph (1) of subsection (c), by striking "subject to the provisions of title 5, United States Code, relating to the competitive service, classification, and General Schedule pay rates,".

Subtitle C—Bank Securities Registration

SEC. 421. BANK-ISSUED SECURITIES.

Section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is amended—

(1) by striking "or any security issued or guaranteed by any bank;" and

(2) by striking "For purposes of this paragraph, a security issued or guaranteed by a bank shall not include any interest or participation in any collective trust fund maintained by a bank; and" and inserting "For purposes of this title,".

SEC. 422. SAVINGS ASSOCIATION-ISSUED SECURITIES.

Section 3(a)(5) of the Securities Act of 1933 (15 U.S.C. 77c(a)(5)) is amended to read as follows:

"(5) Any security—

"(A) issued by a farmer's cooperative organization exempt from tax under section 521 of the Internal Revenue Code of 1986;

"(B) issued by a corporation described in section 501(c)(16) of such Code and exempt from tax under section 501(a) of such Code;

"(C) issued by a corporation described in section 501(c)(2) of such Code which is exempt from tax under section 501(a) of such Code and is organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization or corporation described in subparagraph (A) or (B); or

"(D) issued or exchanged by a savings association or Federal savings association (as such terms are defined in section 3(b) of the Federal Deposit Insurance Act) in connection with a transaction pursuant to which such institution converts from the mutual stock form of ownership under section 5 of the Home Owners' Loan Act.".

SEC. 123. EXEMPTION FOR SECURITIES IN CERTAIN CORPORATE TRANSACTIONS.

Section 3(a)(9) of the Securities Act of 1933 (15 U.S.C. 77c(a)(9)) is amended to read as follows:

"(9) Except with respect to a security exchanged in a case under title 11, United States Code—

"(A) any security exchanged by the issuer with its existing security holders exclusively where no commission or other remuneration is paid or given directly or indirectly for soliciting such exchange; or

"(B) any security issued or exchanged in connection with a transaction solely involving exchanges or substitutions of securities as part of a reorganization of a corporation into a holding company, if—

"(i) as part of the reorganization, the security holders—

"(I) exchange their securities of the corporation for securities of a newly-formed holding company with no significant assets other than securities of the corporation and its existing subsidiaries; and

"(II) receive securities of the same class evidencing the same proportional share or debt interests in the holding company as they held in the corporation prior to the transaction, except for changes resulting from lawful elimination of fractional interests and the exercise of dissenting shareholder rights under applicable law;

"(ii) the rights and interests of security holders in the holding company are substantially the same as those in the corporation prior to the transaction other than as may be required by law; and

"(iii) the holding company has substantially the same assets and liabilities as the corporation had prior to the transaction;".

SEC. 424. TRANSFERRING ADMINISTRATION OF THE SECURITIES EXCHANGE ACT.

Section 3 of the Securities Act of 1933 (15 U.S.C. 77c) is amended by adding at the end the following:

"(d)(1) Notwithstanding section 2(1), the following interests shall not be considered to be securities for purposes of this title, except as otherwise specifically provided:

"(A) A deposit account, savings account, certificate of deposit, or other deposit instrument issued by a bank or savings association.

"(B) A share account issued by a savings association if such account is insured by the Federal Deposit Insurance Corporation.

"(C) A banker's acceptance.

"(D) A letter of credit issued by a bank or savings association.

"(E) A debit account at a bank or savings association arising from a credit card or similar arrangement.

The exemption provided by this paragraph shall apply only to a participation in an interest, account, certificate, instrument, acceptance, or letter that is a direct obligation of a bank or savings association.

"(2) For purposes of this subsection, the term 'deposit' means the unpaid balance of money or its equivalent received or held by a bank or savings association in the usual course of business, and

"(A) for which it has given or is obligated to give credit, either conditionally or unconditionally, to a commercial, checking, savings, time, or thrift account,

"(B) which is evidenced by its certificate of deposit, a check or draft drawn against a deposit account and certified by a bank or savings association, a letter of credit or a traveler's check, or by any other similar instrument on which a bank or savings association is liable,

"(C) which consists of nonpooled assets of individual trust funds received or held by a bank or savings association whether held in the trust department or deposited in any other department of such bank or savings association,

"(D) which is received or held by a bank or savings association for a special or specific noninvestment purpose, including, without being limited to, escrow funds, funds held as security for any obligation due to the bank or savings association or others (including funds held as dealers' reserves) or for securities loaned by the bank or savings association, funds deposited by a debtor to meet maturing subscriptions to United States Government securities, funds held for distribution or purchase of securities, funds held to meet its acceptances or letters of credit, and withheld taxes; or

"(E) which is—

"(i) insured by the Federal Deposit Insurance Corporation;

"(ii) subject to deposit reserve requirements adopted by the Board of Governors of the Federal Reserve System; or

"(iii) is regulated as a deposit by the Office of Thrift Supervision, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Board of Governors of the Federal Reserve System.

"(3) For purposes of this subsection, the term 'savings association' shall have the same meaning as in section 3 of the Federal Deposit Insurance Act.".

SEC. 425. TRUST INDENTURE ACT TECHNICAL AMENDMENT.

Section 304(a)(4)(A) of the Trust Indenture Act of 1939 (15 U.S.C. 77ddd(a)(4)(A)) is amended by striking "subsection 3(a)" and inserting "section 3(a) or by section 3(d)".

SEC. 426. TECHNICAL AMENDMENTS.

Section 12(2) of the Securities Act of 1933 (15 U.S.C. 77*l*(2)) is amended by inserting "or subsection (d)" after "subsection (a)" within the parenthetical.

SEC. 427. EFFECTIVE DATE.

This subtitle shall become effective 270 days after the date of enactment of this Act.

TITLE V—CONSUMER PROTECTION

Subtitle A—Truth in Savings and Investments

SEC. 501. SHORT TITLE.

This subtitle may be cited as the "Truth in Savings and Investments Act".

SEC. 502. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that uniformity in calculating and disclosing the yields and basic terms of savings accounts and investment accounts would—

(1) better enable consumers to make informed decisions among savings and investment options; and

(2) increase competition among depository institutions and investment companies.

(b) PURPOSE.—The purpose of this subtitle is to require—

(1) standardization of the method of calculating yields which are payable on accounts and investments; and

(2) the clear and uniform disclosure of the key costs associated with such accounts and investments,

so that consumers can make meaningful comparisons among the competing claims of depository institutions and investment companies.

SEC. 503. DEFINITIONS.

For the purposes of this subtitle—

(1) ACCOUNT.—The term "account" means an account offered other than for a business purpose to 1 or more individuals or an unincorporated nonbusiness association of individuals by a depository institution into which a customer deposits funds. Such term includes a demand account, time account, negotiable order of withdrawal account, credit union share, share certificate, and share draft account.

(2) ANNUAL PERCENTAGE YIELD.—The term "annual percentage yield" means the total amount of interest that would be received on a $100 deposit, based on the annual rate of simple interest and the frequency of compounding for a 365-day period, expressed as a percentage calculated by a method that the Board shall prescribe by regulation.

(3) BOARD.—The term "Board" means the Board of Governors of the Federal Reserve System.

(4) DEPOSITORY INSTITUTION.—The term "depository institution" has the same meaning as in clauses (i) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act.

(5) INTEREST.—The term "interest" includes a dividend paid with respect to a credit union share, share certificate, or share draft account which is an account under paragraph (1).

(6) MULTIPLE RATE ACCOUNT.—The term "multiple rate account" means an account that has 2 or more annual rates of simple interest which take effect in succeeding periods and which are known at the time of disclosure.

SEC. 504. DISCLOSURE OF YIELDS AND TERMS OF ACCOUNTS.

(a) IN GENERAL.—Except as provided in subsection (c), an advertisement, announcement, or solicitation initiated by any depository institution, or by any other entity, relating to any account—

(1) may not include a reference to a specific rate of interest payable on amounts held in such account, or to a specific yield or rate of earnings on amounts so held, other than a reference to the annual percentage yield; and

(2) shall, if it contains a reference to the annual percentage yield, state the information described in subsection (b) in a clear and conspicuous manner.

(b) INFORMATION REQUIRED TO BE DISCLOSED IF ANNUAL PERCENTAGE YIELD IS USED.—The information required to be disclosed by subsection (a)(2), to the extent applicable, is the following:

(1) The period during which such annual percentage yield is in effect.

(2) All minimum account balance and time requirements which must be met in order to earn the advertised yield (and, in the case of accounts for which more than 1 yield is stated, each annual percentage yield and the account minimum balance requirement associated with each such yield shall be in close proximity and have equal prominence).

(3) The minimum amount of the initial deposit which is required to open the account in order to obtain the yield advertised, if such minimum amount is greater than the minimum balance necessary to earn the advertised yield.

(4) A statement that regular fees or other conditions could reduce the yield.

(5) A statement that a penalty shall be imposed for early withdrawal.

(c) BROADCAST AND ELECTRONIC MEDIA AND OUTDOOR ADVERTISING EXCEPTION.—The Board may, by regulation, exempt—

(1) advertisements, announcements, or solicitations made by any broadcast or electronic medium,

(2) any outdoor advertising display not on the premises of the depository institution, or

(3) any advertising display on the premises of the depository institution or other entity offering the account or investment,

from any disclosure requirements described in paragraph (3) or (4) of subsection (b) if the Board finds that any such disclosure would be unnecessarily burdensome.

(d) Misleading Descriptions of Free or No-Cost Accounts Prohibited.—No advertisement, announcement, or solicitation made by any depository institution or by any other entity may refer to or describe an account as a free or no-cost account if—

(1) in order to avoid fees or service charges for any period—

(A) a minimum balance must be maintained in the account during such period; or

(B) the number of transactions are limited during such period; or

(2) any regular service or transaction fee is imposed.

(e) Misleading or Inaccurate Advertisements Prohibited.—No depository institution or other entity shall make any advertisement, announcement, or solicitation relating to an account that is inaccurate or misleading or that misrepresents its deposit contracts.

SEC. 505. ACCOUNT SCHEDULE.

(a) In General.—Each depository institution shall maintain a schedule of fees, charges, yields, and other terms applicable to each class of accounts offered by the depository institution, in accordance with the requirements of this section and regulations which the Board shall prescribe. The schedule for each class may be in the form of separate schedules or one comprehensive document. The Board shall specify, by regulation, which fees, charges, penalties, terms, conditions, and account restrictions must be included in a schedule required under this subsection. A depository institution need not include in such schedule any information not specified in such regulation.

(b) Information on Fees and Charges.—The schedule required under subsection (a) with respect to any account shall contain the following information:

(1) A description of all fees, periodic service charges, and penalties which may be charged or assessed against the account (or against the account holder in connection with such account), the amount of any such fees, charges, or penalties (or the method by which such amounts will be calculated), and the circumstances under which any such amounts will be assessed.

(2) All minimum balance requirements that affect fees, charges, and penalties, including a clear description of how each minimum balance is calculated.

(3) Any minimum amount required with respect to the initial deposit in order to open the account.

(c) Information on Yields.—The schedule required under subsection (a) with respect to any account shall include the following information:

(1) Any annual percentage yield.

(2) The period during which any annual percentage yield will be in effect.

(3) Any annual rate of simple interest.

(4) The frequency with which interest will be compounded and credited.

(5) Any minimum balance which must be maintained to earn the rates and obtain the yields disclosed pursuant to this subsection and a clear description of how such minimum balance is calculated.

(6) A clear description of any minimum time requirement which must be met in order to obtain the yields disclosed pursuant to this subsection and any information described in paragraph (1), (2), (3), or (4) that will apply if any time requirement is not met.

(7) A statement, if applicable, that any interest which has accrued but has not been credited to an account at the time of a withdrawal from, or the closing of, the account will not be paid by the depository institution or credited to the account by reason of such withdrawal or closing.

(8) Any provision or requirement relating to nonpayment of interest, including any charge or penalty for early withdrawal, and the conditions under which any such charge or penalty may be assessed.

The information described in paragraphs (1), (3), and (4) shall be provided for each period during which a different annual rate of simple interest is in effect (or, if applicable, the method for computing such information).

(d) OTHER INFORMATION.—The schedule required under subsection (a) shall include such other disclosures as the Board may determine to be necessary to allow consumers to understand and compare accounts, including frequency of interest rate adjustments, account restrictions, and renewal policies for time accounts.

(e) STYLE AND FORMAT.—Schedules required under subsection (a) shall be written in clear and plain language and be presented in a format designed to give consumers the ability to readily understand the terms of the accounts offered.

SEC. 506. DISCLOSURE REQUIREMENTS FOR CERTAIN ACCOUNTS.

The Board shall by regulation prescribe such modifications in the disclosure requirements under this subtitle relating to annual percentage yields as may be necessary to carry out the purposes of this subtitle in the case of—

(1) accounts with respect to which the determination of annual percentage yield is based on an annual rate of interest that is guaranteed for a period of less than 1 year;

(2) variable rate accounts;

(3) accounts which, pursuant to law, do not guarantee payment of a stated rate; and

(4) multiple rate accounts.

SEC. 507. DISTRIBUTION OF SCHEDULES.

(a) IN GENERAL.—Any schedule required under section 505 shall be—

(1) made available to any person upon request; and

(2) provided to any potential customer before an account is opened or a service is rendered,

beginning not more than 6 months after the regulations issued by the Board take effect.

(b) NOTICE TO CURRENT ACCOUNT HOLDERS.—For any account for which the depository institution delivers an account statement on a quarterly or more frequent basis, the depository institution shall include on or with any regularly scheduled mailing posted or delivered within 6 months after the regulations issued by the Board take effect, a statement that the account holder has the right to request an account schedule containing the terms, charges, and interest rates of the account, and that the account holder may wish to request such an account schedule.

(c) DISTRIBUTION IN CASE OF CERTAIN INITIAL DEPOSITS.—If—

(1) a depositor is not physically present at an office of a depository institution at the time an initial deposit is accepted with respect to an account established by or for such person; and

(2) the schedule required under section 505(a) has not been furnished previously to such depositor,

the depository institution shall mail the schedule to the depositor at the address shown on the records of the depository institution for such account not later than 10 days after the date of the initial deposit.

(d) DISTRIBUTION OF NOTICE OF CERTAIN CHANGES.—If—

(1) any change is made in any term or condition which is required to be disclosed in the schedule required under section 505(a) with respect to any account; and

(2) the change may reduce the yield or adversely affect any holder of the account,

all account holders who may be affected by such change shall be notified and provided with a description of the change by mail at least 30 days before the change takes effect. This subsection does not apply to changes in annual percentage yields of variable rate accounts.

(e) DISTRIBUTION IN CASE OF ACCOUNTS ESTABLISHED BY MORE THAN 1 INDIVIDUAL OR BY A GROUP.—If an account is established by more than 1 individual or for a person other than an individual, any distribution described in this section with respect to such account meets the requirements of this section if the distribution is made to 1 of the individuals who established the account or 1 individual representative of the person on whose behalf such account was established.

SEC. 508. PERIODIC STATEMENTS.

For any account for which a depository institution provides a periodic statement, the depository institution shall provide to each of its account holders on or accompanying each periodic statement a clear and conspicuous disclosure of—

(1) the annual percentage yield;

(2) the amount of interest earned; and

(3) any fees or charges imposed.

SEC. 509. PAYMENT OF INTEREST.

(a) DETERMINATION OF BALANCE ON WHICH INTEREST IS CALCULATED.—Except as provided in subsection (c), interest shall be calculated on the principal balance in an interest-bearing account at a depository institution by using—

(1) the average daily balance method, which is the sum of each day's closing balance divided by the number of days in the period, or

(2) the day of deposit to day of withdrawal method, as defined by the Board.

Each agency referred to in section 511 shall, in connection with its examination functions, examine the accuracy of depository institutions' balance calculations.

(b) DATE BY WHICH INTEREST MUST ACCRUE.—Interest on accounts that are subject to this Act shall begin to accrue not later than the business day specified for interest-bearing accounts in section 606 of the Expedited Funds Availability Act, subject to subsections (b) and (c) of such section.

(c) SPECIAL RULE FOR CREDIT UNIONS.—Subsection (a) shall not apply to an account at a depository institution described in section 19(b)(1)(A)(iv) of the Federal Reserve Act if the depository institution—

(1) calculates the accrual of interest or dividends by a method other than the method described in subsection (a) with respect to all funds, including cash, deposited in such account; and

(2) provides notice of interest payment policy in the manner required by section 605(e) of the Expedited Funds Availability Act.

(d) CALCULATED ON FULL AMOUNT OF PRINCIPAL.—Interest on an interest-bearing account at any depository institution shall be calculated by such institution on the full amount of principal in the account for each day of the stated calculation period at the rate or rates of interest disclosed pursuant to this subtitle.

(e) NO PARTICULAR METHOD OF COMPOUNDING INTEREST REQUIRED.—Subsection (d) shall not be construed as prohibiting or requiring the use of any particular method of compounding or crediting interest.

SEC. 510. REGULATIONS.

(a) IN GENERAL.—The Board, after consultation with each agency referred to in section 511(a) and after providing public notice and opportunity for comment, shall prescribe regulations to carry out the purpose and provisions of this subtitle. The regulations may contain any classification, differentiation, or other provision, and may provide an exception for any class of accounts which, in the judgment of the Board, may be necessary or proper to carry out the purposes of this subtitle, to prevent circumvention or evasion of the requirements of this subtitle, or to facilitate compliance with the requirements of this subtitle.

(b) MODEL FORMS AND CLAUSES.—

(1) IN GENERAL.—The Board shall publish model forms and clauses for common disclosures to facilitate compliance with this subtitle. In devising such forms, the Board shall consider

the use by depository institutions of data processing or similar automated machines.

(2) USE OF FORMS AND CLAUSES DEEMED IN COMPLIANCE.—Nothing in this subtitle may be construed to require a depository institution to use any such model form or clause prescribed by the Board under this subsection. A depository institution shall be deemed to be in compliance with the disclosure provisions of this subtitle if the depository institution—

(A) uses any appropriate model form or clause published by the Board; or

(B) uses any such model form or clause and changes it by—

(i) deleting any information which is not required by this subtitle; or

(ii) rearranging the format,

if in making such deletion or rearranging the format, the depository institution does not affect the substance, clarity, or meaningful sequence of the disclosure.

(3) PUBLIC NOTICE AND OPPORTUNITY FOR COMMENT.—The Board shall adopt model disclosure forms and clauses after giving appropriate notice and opportunity for public comment in accordance with section 553 of title 5, United States Code.

SEC. 511. ADMINISTRATIVE ENFORCEMENT.

(a) IN GENERAL.—Compliance with the requirements imposed under this subtitle shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act, in the case of—

(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), and offices, branches, and agencies of foreign banks located in the United States (other than Federal branches, Federal agencies, and insured State branches of foreign banks), by the Board of Governors of the Federal Reserve System;

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation; and

(D) depository institutions described in clause (i), (ii), or (iii) of section 19(b)(1)(A) of the Federal Reserve Act (other than member banks of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 5(d) of the Home Owners' Loan Act, by the Office of Thrift Supervision in the case of depository institutions described in clause (v) or (vi) of section 19(b)(1)(A) of the Federal Reserve Act;

(3) the Federal Credit Union Act, by the National Credit Union Administration Board in the case of Federal credit unions; and

(4) the Federal Trade Commission Act, by the Federal Trade Commission in the case of State-chartered credit unions.

The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

(b) ADDITIONAL ENFORCEMENT POWERS.—

(1) VIOLATION OF THIS SUBTITLE TREATED AS VIOLATION OF OTHER ACTS.—For purposes of the exercise by any agency referred to in subsection (a) of such agency's powers under any Act referred to in such subsection, a violation of a requirement imposed under this subtitle shall be deemed to be a violation of a requirement imposed under that Act.

(2) ENFORCEMENT AUTHORITY UNDER OTHER ACTS.—In addition to the powers of any agency referred to in subsection (a) under any provision of law specifically referred to in such subsection, each agency may exercise, for purposes of enforcing compliance with any requirement imposed under this subtitle, any other authority conferred on such agency by law.

(c) REGULATIONS BY AGENCIES OTHER THAN THE BOARD.—The authority of the Board to issue regulations under this subtitle does not impair the authority of any other agency referred to in subsection (a) to make rules regarding its own procedures in enforcing compliance with the requirements imposed under this subtitle.

SEC. 512. CIVIL LIABILITY.

(a) CIVIL LIABILITY.—Except as otherwise provided in this section, any depository institution or other entity offering an account that fails to comply with any requirement imposed under this subtitle or any regulation prescribed under this subtitle with respect to any person who is an account holder is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of the failure;

(2)(A) in the case of an individual action, such additional amount as the court may allow, except that the liability under this subparagraph shall not be less than $100 nor greater than $1,000; or

(B) in the case of a class action, such amount as the court may allow, except that—

(i) as to each member of the class, no minimum recovery shall be applicable; and

(ii) the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same depository institution shall not be more than the lesser of $500,000 or 1 percent of the net worth of the depository institution involved; and

(3) in the case of any successful action to enforce any liability under paragraph (1) or (2), the costs of the action, together with a reasonable attorney's fee as determined by the court.

(b) CLASS ACTION AWARDS.—In determining the total amount of an award in a class action, the court shall consider, among other relevant factors—

(1) the amount of any actual damages awarded;

(2) the frequency and persistence of failures of compliance;

(3) the resources of the depository institution;

(4) the number of persons adversely affected; and

(5) the extent to which the failure of compliance was intentional.

(c) Bona Fide Errors.—

(1) General rule.—A depository institution may not be held liable in any action brought under this section for a violation of this subtitle if the depository institution demonstrates by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(2) Examples.—Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors. An error of legal judgment with respect to a depository institution's obligation under this subtitle is not a bona fide error.

(d) Jurisdiction.—Any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year after the date of the occurrence of the violation involved.

(e) Reliance on Board Rulings.—No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board, or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretation or approval under procedures prescribed by the Board, notwithstanding the fact that after such act or omission has occurred, such rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(f) Notification of and Adjustment for Errors.—A depository institution shall not be liable under this section or section 511 for any failure to comply with any requirement imposed under this subtitle with respect to any account if—

(1) before—

(A) the end of the 60-day period beginning on the date on which the depository institution discovered the failure to comply;

(B) any action is instituted against the depository institution by the account holder under this section with respect to such failure to comply; and

(C) any written notice of such failure to comply is received by the depository institution from the account holder,

the depository institution notifies the account holder of the failure of such institution to comply with such requirement; and

(2) the depository institution makes such adjustments as may be necessary with respect to such account to ensure that—

(A) the account holder will not be liable for any amount in excess of the amount actually disclosed with respect to any fee or charge;

(B) the account holder will not be liable for any fee or charge imposed under any condition not actually disclosed; and

(C) interest on amounts in such account will accrue at the annual percentage yield, and under the conditions actually disclosed (and credit will be provided for interest already accrued at a different annual percentage yield and under different conditions than the yield or conditions disclosed).

(g) MULTIPLE INTERESTS IN 1 ACCOUNT.—If more than 1 person holds an interest in any account—

(1) the minimum and maximum amounts of liability under subsection (a)(2)(A) for any failure to comply with the requirements of this subtitle shall apply with respect to such account; and

(2) the court shall determine the manner in which the amount of any such liability with respect to such account shall be distributed among such persons.

(h) CONTINUING FAILURE TO DISCLOSE.—

(1) CERTAIN CONTINUING FAILURES TREATED AS 1 VIOLATION.—Except as provided in paragraph (2), the continuing failure of any depository institution to disclose any particular term required to be disclosed under this subtitle with respect to a particular account shall be treated as a single violation for purposes of determining the amount of any liability of such institution under subsection (a) for such failure to disclose.

(2) SUBSEQUENT FAILURE TO DISCLOSE.—The continuing failure of any depository institution to disclose any particular term required to be disclosed under this subtitle with respect to a particular account after judgment has been rendered in favor of the account holder in connection with a prior failure to disclose such term shall be treated as a subsequent violation for purposes of determining liability under subsection (a).

(3) COORDINATION WITH SECTION 511.—This subsection shall not limit or otherwise affect the enforcement power under section 511 of any agency referred to in subsection (a) of such section.

SEC. 513. CREDIT UNIONS.

(a) IN GENERAL.—No regulation prescribed by the Board under this subtitle shall apply directly with respect to any depository institution described in clause (iv) of section 19(b)(1)(A) of the Federal Reserve Act.

(b) REGULATIONS PRESCRIBED BY THE NCUA.—Within 90 days of the effective date of any regulation prescribed by the Board under this subtitle, the National Credit Union Administration Board shall prescribe a regulation substantially similar to the regulation prescribed by the Board taking into account the unique nature of credit unions and the limitations under which they may pay dividends on member accounts.

SEC. 514. REVIEW OF DISCLOSURE REQUIREMENTS FOR OPEN-END MANAGEMENT INVESTMENT COMPANIES.

The Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 66. REVIEW OF DISCLOSURE REQUIREMENTS FOR YIELDS AND TERMS.

"Not later than January 1, 1993, and annually thereafter, the Commission and the Board of Governors of the Federal Reserve System shall consult with each other (and with any other agency they deem appropriate) to review the regulations prescribed under this Act and the Securities Act of 1933 and the regulations prescribed under the Truth in Savings and Investments Act to assure that such regulations are providing consumers the ability to compare savings and investments options effectively. If at any time as a result of such review, either the Commission or the Board finds that its regulations are not providing consumers the ability to compare savings and investments options effectively, the Commission or the Board, as the case may be, shall modify its regulations to assure that consumers have such ability.".

SEC. 515. EFFECT ON STATE LAW.

(a) IN GENERAL.—The provisions of this subtitle do not supersede any provisions of the law of any State relating to the disclosure of yields payable or terms for accounts to the extent such State law requires the disclosure of such yields or terms for accounts, except to the extent that those laws are inconsistent with the provisions of this subtitle, and then only to the extent of the inconsistency. The Board is authorized to determine whether such inconsistencies exist.

(b) BALANCE ON WHICH INTEREST IS CALCULATED.—The provisions of this subtitle shall supersede any provisions of any State law relating to the determination of the balance on which interest is calculated to the extent such State law specifies the manner for determining the balance on which interest is calculated.

SEC. 516. EFFECTIVE DATE OF REGULATIONS.

The Board shall issue regulations to carry out this subtitle in final form not later than 9 months after the date of enactment of this Act. Such regulations shall take effect not later than 6 months after publication in final form.

Subtitle B—Fair Lending Enforcement

SEC. 521. SHORT TITLE.

This subtitle may be cited as the "Fair Lending Enforcement Act of 1991".

SEC. 522. APPRAISALS.

Section 701 of the Equal Credit Opportunity Act (15 U.S.C. 1691) is amended by adding at the end the following:

"(e) Each creditor shall promptly furnish an applicant, upon written request by the applicant made within a reasonable period of time of the application, a copy of the appraisal report used in connection with the applicant's application for a loan that is or would have been secured by a lien on residential real property. The creditor may require the applicant to reimburse the creditor for the cost of the appraisal.".

SEC. 523. CONSUMER COMPLIANCE PROGRAMS.

(a) FDIC.—The Federal Deposit Insurance Act is amended by adding at the end the following:

"SEC. 41. CONSUMER COMPLIANCE PROGRAM.

"(a) ESTABLISHMENT REQUIRED.—Each appropriate Federal banking agency shall establish a separate consumer compliance program. The head of the consumer compliance program shall report directly to the head of the agency.

"(b) DEFINITIONS.—For purposes of this section—

"(1) CONSUMER COMPLIANCE EXAMINATION.—The term 'consumer compliance examination' means an examination of an insured depository institution to determine the extent to which such institution is in compliance with all applicable laws and regulations relating to consumer protection, including fair lending and community reinvestment laws.

"(2) CONSUMER COMPLIANCE EXAMINER.—The term 'consumer compliance examiner' means an examiner who specializes in assessing compliance with all applicable laws and regulations relating to consumer protection, including fair lending and community reinvestment laws.

"(c) CONSUMER COMPLIANCE EXAMINATIONS.—

"(1) FREQUENCY.—The appropriate Federal banking agency shall conduct on-site consumer compliance examinations of each insured depository institution. Beginning not later than January 1, 1995, the agency shall conduct such an examination of each institution not less than once every 2 years, or as frequently as the agency conducts a regular on-site safety and soundness examination of each institution, whichever is less frequent.

"(2) CONDUCTED BY CONSUMER COMPLIANCE EXAMINERS.—Consumer compliance examinations shall be conducted by consumer compliance examiners under the supervision or oversight of the head of the consumer compliance program. Each appropriate Federal banking agency may consider the size of the depository institution and the complexity of the consumer compliance examination issues presented in determining whether to assign to a particular examination a consumer compliance examiner who exclusively conducts consumer compliance examinations or an examiner who has only received specialized training in consumer compliance examinations. In making this determination each appropriate Federal banking agency shall also consider whether substantive questions of compliance have been raised in previous examinations or in comments or complaints from the public.

"(3) EXAMINATION UPON REQUEST UNDER CERTAIN CIRCUMSTANCES.—Any bank holding company or savings and loan holding company which controls an insured depository institution which determines that a consumer examination of such depository institution may be appropriate to expedite an application or notice for a deposit facility described in section 803(3) of the Community Reinvestment Act of 1977 may request in writing the appropriate consumer compliance program to conduct an examination of the depository institution pursuant to paragraph (1).

"(d) ADDITIONAL RESPONSIBILITIES.—In addition to the responsibilities established by subsection (c), the head of each consumer compliance program shall—

"(1) develop procedures for consumer compliance examinations and other procedures necessary to implement all applicable laws relating to consumer protection, including fair lending and community reinvestment laws;

"(2) train and supervise or oversee consumer compliance examiners;

"(3) develop career opportunities for consumer compliance examiners comparable to those for safety and soundness examiners;

"(4) respond to consumer complaints and inquiries;

"(5) undertake supervisory action and initiate enforcement proceedings with respect to all applicable laws and regulations relating to consumer protection, including fair lending and community reinvestment laws;

"(6) make recommendations to its agency concerning policies and adopt policies with respect to all applicable laws and regulations relating to consumer protection, including fair lending and community reinvestment laws; and

"(7) perform any other duties and functions related to the consumer compliance program.

"(e) EFFECTIVE DATE.—The establishment of separate consumer compliance programs in each of the agencies shall be completed no later than January 1, 1993.

"(f) REPORTS.—Each consumer compliance program shall prepare a description of its activities which shall be included in the agency's annual report to the Congress.".

(b) NATIONAL CREDIT UNION ADMINISTRATION.—Title I of the Federal Credit Union Act is amended by adding at the end the following:

"SEC. 130. CONSUMER COMPLIANCE PROGRAM.

"(a) ESTABLISHMENT REQUIRED.—The Board shall establish a separate consumer compliance program. The head of the consumer compliance program shall report directly to the Board.

"(b) DEFINITIONS.—For purposes of this section—

"(1) CONSUMER COMPLIANCE EXAMINATION.—The term 'consumer compliance examination' means an examination of an insured credit union to determine the extent to which such credit union is in compliance with all applicable laws and regulations relating to consumer protection, including fair lending laws.

"(2) CONSUMER COMPLIANCE EXAMINER.—The term 'consumer compliance examiner' means an examiner who specializes in assessing compliance with all applicable laws and regulations relating to consumer protection, including fair lending laws.

"(c) CONSUMER COMPLIANCE EXAMINATIONS.—

"(1) FREQUENCY.—The Board shall conduct on-site consumer compliance examinations of each insured credit union. Beginning not later than January 1, 1995, the Board shall conduct such an examination of each insured credit union not less than once every 2 years, or as frequently as the Board conducts a regular on-site safety and soundness examination of the institution, whichever is less frequent.

"(2) CONDUCTED BY CONSUMER COMPLIANCE EXAMINERS.—Consumer compliance examinations shall be conducted by consumer compliance examiners under the supervision or oversight of the head of the consumer compliance program. The Board may consider the size of the institution and the complexity of the consumer compliance examination issues presented in determining whether to assign to a particular examination a consumer compliance examiner who exclusively conducts consumer compliance examinations or an examiner who has only received specialized training in consumer compliance examinations. In making this determination the Board shall also consider whether substantive questions of compliance have been raised in previous examinations or in comments or complaints from members or the public.

"(d) ADDITIONAL RESPONSIBILITIES.—In addition to the responsibilities established by subsection (c), the head of the consumer compliance program shall—

"(1) develop procedures for consumer compliance examinations and other procedures necessary to implement all applicable laws relating to consumer protection, including fair lending laws;

"(2) train and supervise or oversee consumer compliance examiners;

"(3) develop career opportunities for consumer compliance examiners comparable to those for safety and soundness examiners;

"(4) respond to consumer complaints and inquiries;

"(5) undertake supervisory action and initiate enforcement proceedings with respect to all applicable laws and regulations relating to consumer protection, including fair lending laws;

"(6) make recommendations to the Board concerning policies and adopt policies with respect to all applicable laws and regulations relating to consumer protection, including fair lending laws; and

"(7) perform any other duties and functions related to the consumer compliance program.

"(e) EFFECTIVE DATE.—The establishment of a separate consumer compliance program shall be completed no later than January 1, 1993.

"(f) REPORTS.—The consumer compliance program shall prepare a description of its activities which shall be included in the Board's annual report to the Congress.".

(c) STATE CREDIT UNIONS.—Section 204 of the Federal Credit Union Act is amended by adding after the second sentence a new sentence to read: "The Board shall conduct consumer compliance examinations as set forth in section 130 of State chartered insured credit unions only if the appropriate State supervisory agency has not established an examination program similar to that described in section 130.

SEC. 524. ENFORCEMENT OF EQUAL CREDIT OPPORTUNITY ACT.

(a) PATTERN OR PRACTICE.—Section 706(g) of the Equal Credit Opportunity Act (15 U.S.C. 1691e(g)) is amended by adding at the end the following: "Each of the agencies referred to in paragraphs (1), (2), and (3) of section 704(a) shall refer the matter to the Attorney General whenever it has reason to believe that 1 or more creditors has engaged in a pattern or practice of discouraging or denying applications for credit in violation of section 701(a) of this title. Each of such agencies is authorized to refer the matter to the Attorney General whenever it has reason to believe that 1 or more creditors has violated section 701(a) of this title.".

(b) DAMAGES.—Section 706(h) of the Equal Credit Opportunity Act (15 U.S.C. 1691e(h)) is amended by inserting "actual and punitive damages and" after "including".

(c) NOTICE TO HUD.—Section 706 of the Equal Credit Opportunity Act (15 U.S.C. 1691e) is amended by adding at the end the following:

"(k) Whenever an agency referred to in paragraph (1), (2), or (3) of section 704(a) has reason to believe that a violation of this title has occurred, as a result of receiving a consumer complaint, conducting a consumer compliance examination, or otherwise, and that the alleged violation would be a violation of the Fair Housing Act, and the agency does not refer the matter to the Attorney General pursuant to subsection (g), it shall—

"(1) notify the Secretary of Housing and Urban Development of the violation; and

"(2) notify the applicant that the Secretary of Housing and Urban Development has been notified of the alleged violation and that remedies for the violation may be available under the Fair Housing Act.".

SEC. 525. HOME MORTGAGE DISCLOSURE ACT.

(a) IN GENERAL.—Section 309 of the Home Mortgage Disclosure Act (12 U.S.C. 2808) is amended—

(1) by striking "depository" before "institution";

(2) by inserting "specified in section 303(2)(A)" after "institution"; and

(3) by adding at the end the following: "The Board, in consultation with the Secretary, may exempt institutions described in section 303(2)(B) that are comparable within their respective industries to institutions that are exempt under the preceding sentence.".

(b) EFFECTIVE DATE.—This section shall become effective on January 1, 1992.

Subtitle C—Basic Financial Services Accounts

SEC. 531. SHORT TITLE.

This subtitle may be cited as the "Financial Services Access Act of 1991".

SEC. 532. BASIC FINANCIAL SERVICES ACCOUNTS REQUIRED.

(a) In General.—Each depository institution shall offer a basic financial services account which, at the election of the account holder, may be used to obtain—

(1) basic transaction account services; or

(2) government check cashing account services.

(b) Requirements for Basic Financial Services Accounts.—A basic financial services account shall meet the requirements of this subtitle. A basic financial services account does not meet the requirements of this subtitle if it—

(1) requires any other relationship with the depository institution, except as provided in section 537;

(2) allows a depository institution to discriminate against low-income individuals on the basis of race, color, national origin, sex, age, marital status, receipt of public assistance, source of income, exercise of any rights under consumer protection statutes, employment status, or access to credit in order to use such basic financial services account; or

(3) requires the account holder exclusively to use direct deposit services, automated teller machines, or other nonteller services for such basic financial services account.

(c) Exemption for Certain Individuals.—

(1) In general.—A depository institution is not required to provide a basic financial services account to any individual who—

(A) has a deposit account relationship at the depository institution or any other depository institution;

(B) has a government check cashing relationship at the depository institution or any other depository institution; or

(C) has an annual household income exceeding $20,000.

(2) Self-certification.—In carrying out paragraph (1)(C), a depository institution may—

(A) require the individual to certify on an application form that the individual's annual household income is less than $20,000; and

(B) not require any other proof of annual household income.

(d) Exemption From Basic Transaction Services Requirements.—Any depository institution that on the effective date of this subtitle offers basic transaction services that are, from an account holder's perspective, comparable to or more favorable than those services prescribed in subsection (a)(1), shall be exempt from section 534 for as long as it continues to offer comparable or more favorable basic transaction services.

(e) Exemption From Check Cashing Services Requirements.—Any depository institution that on the effective date of this subtitle offers government check cashing services that, from an account holder's perspective, are comparable to or more favorable than those services prescribed in section 535, shall be exempt from subsection (a)(2) for as long as it continues to offer comparable or more favorable government check cashing services.

SEC. 533. ACCOUNT APPLICATIONS.

(a) In General.—The Board shall develop a model application form for the use of depository institutions in offering a basic financial services account.

(b) Minimum Requirements.—The application form developed by the Board, or a comparable form developed by a depository institution in lieu thereof, shall—

(1) be available at all the depository institution's deposit taking offices that—

(A) open new accounts; and

(B) are staffed by individuals employed by such depository institutions; and

(2) contain—

(A) the name, address, date of birth, handwritten signature, and the taxpayer identification number or other identification number of the applicant;

(B) other information the Board reasonably determines to be necessary to provide basic transaction account services and government check cashing account services pursuant to this section; and

(C) a certification that the applicant's annual household income is less than $20,000.

(c) Identification of Applicant.—At the time of application, an applicant may be required to present 2 forms of identification, 1 of which includes the signature of the applicant and 1 of which either includes a photograph or is the birth certificate of the applicant.

(d) Other Services.—At the time of application, an applicant may be required by the depository institution to sign a document in which the applicant states whether he or she has, or has applied for, any other basic transaction services or government check cashing services.

(e) Copy Provided.—The depository institution shall provide the applicant a copy of the completed application form demonstrating the fact that the application has been received and filed with the depository institution within 15 calendar days after filing.

(f) Rejection for Fraud or Intentional Material Misrepresentation.—

(1) In general.—If, after review in good faith of the application, a depository institution has reason to believe that an applicant has committed or attempted to commit fraud against a depository institution, has made an intentional material misrepresentation in applying for a basic financial services account, has a record of writing checks for insufficient funds, has a credit record of delinquent accounts or unpaid judgments, or has had an account closed pursuant to section 534(a)(10), the depository institution may deny service to the applicant.

(2) Requirements.—A depository institution which denies service to an applicant shall—

(A) provide the applicant with timely written notice setting forth the reasons supporting the depository institution's denial of service and the procedures available to the applicant for filing a complaint, as provided in section 540; and

(B) maintain records and files with regard to each denial made pursuant to this subsection for a minimum period of 1 year from the date of denial.

(3) FORM.—The Board shall develop a model form for the use of depository institutions in notifying applicants of a denial of service pursuant to this subsection.

(g) INITIAL WAITING PERIOD.—The depository institution may impose a waiting period of not more than 15 calendar days from the date of application before providing an applicant with a basic transaction services account or a government check cashing services account.

(h) IDENTIFICATION CARD.—If a depository institution issues an identification card to approved applicants, it may assess a reasonable, cost-based charge for replacement of a lost or stolen card.

SEC. 534. BASIC TRANSACTION SERVICES ACCOUNT REQUIREMENTS.

(a) IN GENERAL.—An account is a basic transaction services account for the purpose of section 532 if it is a transaction account that—

(1) is available to account holders who maintain an average balance of not more than $750 during each monthly period;

(2) does not require a minimum initial deposit or minimum balance requirement of more than $25;

(3) does not provide for the imposition of fees other than—

(A) a monthly maintenance fee or service charge that does not exceed the real, direct, and demonstrable costs of providing the account (including fraud losses and deposit insurance premiums), as certified by the depository institution, plus a modest profit not to exceed 10 percent of such costs;

(B) a reasonable, cost-based fee for check printing;

(C) a reasonable, cost-based fee for processing checks returned for lack of sufficient funds; and

(D) a reasonable, cost-based fee for transactions in excess of the minimum number of allowable transactions described in paragraph (5), if the depository institution permits transactions in excess of the minimum;

(4) permits checks, share drafts, electronic, or other debit instruments to be drawn on the account for purposes of making payments or other transfers to third parties;

(5) permits at least 10 withdrawals per month, including withdrawals described in paragraph (4), whether by check, share draft, in person, proprietary automatic teller machines, or other means;

(6) provides the account holder with—

(A) a detailed periodic statement listing all transactions for the period involved; or

(B) a passbook in which the depository institution enters all transactions for such account;

(7) does not require the depository institution to pay interest on deposited funds;

(8) at the election of the account holder, allows regularly recurring payments to the account holder to be made by a payor directly to the depository institution for direct deposit into the

account of the account holder, if the depository institution offers direct deposit services to account holders;

(9) allows the depository institution—

(A) to market direct deposit services aggressively;

(B) to offer cost-based discounts to account holders who elect to rely wholly or partially on direct deposit or automatic teller machines in conjunction with the account; and

(C) to structure the account so as to require the use of direct deposit or automatic teller machines if—

(i) at the time of establishing the account, the account holder receives a clear and conspicuous written notice, through a disclosure form developed by the Board, stating that the account holder may decline to use direct deposit or automatic teller machines; and

(ii) the account holder does not decline to use direct deposit or automatic teller machines; and

(10) is subject to closure upon notice to the account holder due to—

(A) overdrafts, returned checks, or rejected electronic debits with respect to an account on 3 distinct occasions within any 6-month period;

(B) fraudulent activity involving the account of such account holder; or

(C) failure by the account holder to abide by the terms of the account, as provided in paragraphs (1) through (3) of subsection (a).

(b) Cost Analysis.—For the purpose of subsection (a)(3)(A), the depository institution shall base the monthly maintenance fee or service charge either on its own study of costs or on functional cost analysis (actual time and actual net processing cost) studies of various types of depository institutions performed by the Board.

SEC. 535. GOVERNMENT CHECK CASHING SERVICES ACCOUNT REQUIREMENTS.

(a) In General.—An account is a government check cashing services account for the purpose of section 532 if it—

(1) permits the account holder to cash government checks in amounts of as much as $1,500, if—

(A) the account holder presents the check and is the person to whom the check has been issued; and

(B) the individual has applied to the depository institution for government check cashing services under section 533;

(2) does not require the account holder to pay a monthly service charge or maintenance fee for check cashing services;

(3) does not require the account holder to pay a fee for the establishment of a check cashing account;

(4) does not have check cashing fees that exceed the real, direct, and demonstrable costs of providing check cashing account services (including fraud losses), as certified by the depository institution, plus a modest profit not to exceed 10 percent of such costs;

(5) allows the account holder to designate at least 3 offices of the depository institution at which to cash government checks, if such offices—

(A) take deposits;

(B) open new accounts; and

(C) are staffed by individuals employed by such depository institution;

unless the depository institution has fewer than 3 offices which meet the requirements of subparagraphs (A), (B), and (C); and

(6) permits the depository institution to require, prior to cashing any government check, the account holder to present—

(A) any identification described in section 533(c) or section 533(h); and

(B) the account holder's government check cashing services account number.

(b) Cost Analysis.—For the purpose of subsection (a)(4), the depository institution shall base such check cashing fees either on its own study of costs or on functional analysis (actual time and actual net processing cost) studies of various types of depository institutions performed by the Board.

SEC. 536. INFORMATION ON ACCOUNTS.

(a) Display.—A depository institution shall conspicuously display in its lobby and other public areas of the institution brochures, pamphlets, or other written information that inform account holders and potential account holders that basic financial services accounts are available.

(b) Information.—Such brochures, pamphlets, or other written information shall—

(1) clearly explain the material features and limitations of basic transaction and government check cashing services;

(2) state that further information concerning such services is available from the depository institution upon request; and

(3) include information concerning an account holder's right to complain regarding noncompliance with this subtitle.

(c) Availability.—A depository institution shall provide the information described in subsection (b) to any individual upon request.

SEC. 537. SPECIAL RULES FOR CREDIT UNIONS.

(a) Basic Transaction Services.—Any credit union which, in the ordinary course of business, offers share draft accounts to its own members shall provide basic transaction services pursuant to this subtitle to any individual who is or becomes a member of such credit union if the individual complies with the requirements of this subtitle.

(b) Government Check Cashing Services.—Any credit union which, in the ordinary course of business, cashes share drafts or government checks for its own members shall provide government check cashing services pursuant to this subtitle to any individual who is or becomes a member of such credit union if the individual complies with the requirements of this subtitle.

SEC. 538. SPECIAL RULES FOR CERTAIN DEPOSITORY INSTITUTIONS.

(a) Institutions That Do Not Offer Transaction Accounts.—A depository institution, other than a credit union, which does not, in the ordinary course of business, offer transaction accounts to the general public, is not required to provide basic transaction services.

(b) Institutions That Do Not Cash Checks.—A depository institution which does not, in the ordinary course of business, cash checks is not required to provide government check cashing services.

SEC. 539. PREVENTING FRAUD LOSSES.

(a) In General.—The Board may, upon petition by any individual depository institution, suspend, by regulation or order, any government check cashing services account requirement under this subtitle if the Board determines that the depository institution is experiencing an unacceptable level of losses due to check-related fraud in providing such account services.

(b) Suspension of Requirements.—The Board may, by regulation or order, suspend any government check cashing services account requirement imposed by this subtitle for any class of checks if the Board determines that—

(1) depository institutions are experiencing an unacceptable level of losses due to check-related fraud with respect to such class of checks; or

(2) there is reasonable cause to believe that such class of checks is being used in a scheme to defraud.

(c) Report.—Within 10 days of issuing any order or prescribing any regulation under subsections (a) and (b) of this section, the Board shall submit a report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, explaining the reason for the order or regulation and the evidence considered in making the determination to issue an order or prescribe a regulation.

(d) Exemptions.—This subtitle does not apply with respect to any government check presented for cashing to a depository institution if the depository institution has reason to believe that—

(1) such check is fraudulent, is being fraudulently presented, or has been altered or forged;

(2) the individual presenting the check is misrepresenting or has misrepresented his or her identity;

(3) any form of identification that is presented in connection with cashing such check has been altered or forged; or

(4) the check will not be honored by the check-issuing governmental authority.

For purposes of this subsection, a reasonable belief requires the existence of facts which would give rise to a well-grounded belief in the mind of a reasonable person.

SEC. 540. ADMINISTRATIVE ENFORCEMENT.

(a) In General.—Compliance with the requirements imposed under this subtitle shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act—

(A) by the Office of the Comptroller of the Currency with respect to national banks, and Federal branches and Federal agencies of foreign banks;

(B) by the Board of Governors of the Federal Reserve System with respect to member banks of the Federal Reserve System (other than national banks), and offices, branches, and agencies of foreign banks located in the United States (other than Federal branches, Federal agencies, and insured State branches of foreign banks);

(C) by the Board of Directors of the Federal Deposit Insurance Corporation with respect to banks the deposits of which are insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks; and

(D) by the Office of Thrift Supervision with respect to Federal savings associations and Federal savings banks; and

(2) section 206 of the Federal Credit Union Act, by the National Credit Union Administration Board, with respect to any insured credit union.

The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

(b) ADDITIONAL ENFORCEMENT POWERS.—

(1) VIOLATION OF THIS SUBTITLE TREATED AS VIOLATION OF OTHER ACTS.—For purposes of the exercise by the appropriate Federal banking agency of any such agency's powers under any Act referred to in subsection (a), a violation of a requirement imposed under this subtitle shall be deemed to be a violation of a requirement imposed under that Act.

(2) ENFORCEMENT AUTHORITY UNDER OTHER ACTS.—In addition to the appropriate Federal banking agency's powers under any provision of law referred to in subsection (a), each such agency may exercise, for purposes of enforcing this subtitle, any other authority conferred on such agency by any other law.

(c) FINING AUTHORITY.—No administrative monetary penalty shall be imposed pursuant to this subtitle.

(d) COMPLAINTS BY INDIVIDUALS.—

(1) IN GENERAL.—The Board shall develop a complaint form for individuals to use to report possible violations of this subtitle. Each appropriate Federal banking agency that receives a complaint shall conduct an investigation as such agency deems necessary. If such complaint is verified by an investigation, the agency shall carry out proper enforcement actions according to the authority conferred by this subtitle. The agency shall provide the results of such investigation and any enforcement actions in writing to the complainant and the depository institution that was investigated.

(2) TIME LIMIT ON FILING OF CERTAIN COMPLAINTS.—An agency shall not consider any complaint that alleges the denial of an application for a basic financial services account in violation of this subtitle, if the complaint is filed more than 1 year after the institution's denial of the application.

SEC. 541. CIVIL LIABILITY.

This subtitle does not create or imply any private cause of action for damages, including individual or class action causes of action.

SEC. 542. DEFINITIONS.

For the purposes of this subtitle—

(1) APPROPRIATE FEDERAL BANKING AGENCY.—The term "appropriate Federal banking agency" has the same meaning given such term by section 3 of the Federal Deposit Insurance Act.

(2) BOARD.—The term "Board" means the Board of Governors of the Federal Reserve System.

(3) DEPOSITORY INSTITUTION.—The term "depository institution" means any federally insured depository institution described in clauses (i) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act.

(4) GOVERNMENT CHECK.—

(A) IN GENERAL.—The term "government check" means any check that is issued by—

(i) the United States or any agency of the United States;

(ii) any State or any agency of any State, and that is presented for cashing purposes within the State in which the check was issued; or

(iii) any unit of local government or any agency of any unit of local government, including, but not limited to, local government public assistance payments, and that is presented for cashing purposes within the unit of local government in which the check was issued.

(B) EXCEPTIONS.—The term "government check" does not include—

(i) State-issued payment warrants; or

(ii) checks issued by local government special purpose districts or units.

(5) GOVERNMENT CHECK CASHING RELATIONSHIP.—The term "government check cashing relationship" means an account relationship between an individual and a depository institution under which a government check cashing services account is provided pursuant to section 535 of this subtitle.

(6) STATE.—The term "State" has the meaning given to such term in section 3(a) of the Federal Deposit Insurance Act.

(7) TRANSACTION ACCOUNT.—The term "transaction account" has the meaning given such term by section 19(b)(1)(C) of the Federal Reserve Act.

SEC. 543. STUDY AND REPORT ON INCIDENCE OF FRAUD IN CONNECTION WITH GOVERNMENT CHECK CASHING.

(a) STUDY REQUIRED.—After the end of the 1-year period beginning on the effective date of this subtitle, the Board shall conduct a study of the check cashing services provided pursuant to this subtitle to determine whether, in any case, losses due to fraud in connection with providing such services are causing the costs incurred by various types of depository institutions to exceed revenues from the service fees collected or other income earned in connection with providing such services.

(b) Reported Required.—Before the end of a 6-month period beginning at the end of the period referred to in subsection (a), the Board shall submit a report to the Congress containing the findings and conclusions of the Board with respect to the study, along with such recommendations for legislative and administrative action as the Board determines to be appropriate.

SEC. 544. STUDY AND REPORT ON THE STAGGERING OF FEDERAL RECURRING PAYMENTS.

(a) Study Required.—The Secretary of the Treasury, in consultation with affected agencies and the public, shall conduct a study to examine the feasibility and desirability of staggering payment of Social Security and other Federal recurring government benefit and payroll payments, on the basis of birth date or other appropriate methods, so that such payments do not all occur on the 1st and 15th days of the month.

(b) Report Required.—Not later than 6 months after the date of enactment of this Act, the Secretary of the Treasury shall transmit to the Congress a report regarding the results of the study described in subsection (a), along with any recommendations for legislative and administrative actions, including assessments of any administrative impact, costs to the government, impacts on depository institutions and beneficiaries (including any potential lost or increased interest earnings), convenience to beneficiaries and the government, methods of implementation, and transition mechanisms that should be taken. The Secretary shall consult with the public in preparing the report.

SEC. 545. STUDY AND REPORT ON UTILIZING THE UNITED STATES POSTAL SERVICE TO PROVIDE GOVERNMENT CHECK CASHING SERVICES.

(a) Study Required.—The Comptroller General of the United States shall conduct a study examining current fees and practices of check cashing outlets and the potential for enhancing the access of low-income individuals to government check cashing services through the United States Postal Service.

(b) Report Required.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall provide the Congress with a report regarding the results of the study described in subsection (a), along with any recommendations for Federal or State legislative or administrative action.

SEC. 546. STUDY AND REPORT ON DIRECT DEPOSIT PROGRAM FOR FEDERAL RECURRING PAYMENTS.

(a) Study Required.—The Comptroller General of the United States shall conduct a study to assess the benefits and costs to the Federal Government of utilizing direct deposit versus paper checks to accomplish government payments. In conducting the study, the Comptroller General shall—

(1) consider the administrative cost savings, if any, to be accomplished through the utilization of direct deposit, such as reduced paperwork and personnel involvement, streamlined and cost-effective operations, and reduced postage expenses;

(2) consider the loss in interest earnings to the Federal Government as the result of the earlier relinquishment by the Government of directly deposited funds, using data on major beneficiary programs that utilize recurring Federal benefits payments;

(3) compare the relative costs and benefits to the Federal Government of direct deposit versus paper check payments of Government benefits; and

(4) identify societal costs and benefits of direct deposit with respect to safety, risk of loss to the individual and the Government, convenience, reliability, and timeliness of payments.

(b) REPORT REQUIRED.—Not later than 6 months after the date of enactment of this Act, the Comptroller General shall transmit to the Congress a report containing the results of the study described in subsection (a), along with any recommendations for legislative and administrative action that should be taken.

SEC. 547. STUDY AND REPORT ON COMMUNITY LENDING.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study to—

(1) determine whether there are regulatory impediments to sound bank lending in low- and moderate-income neighborhoods and inner cities;

(2) assess whether the risk-based capital standards discourage sound lending for multifamily housing;

(3) evaluate the policy implications of giving banks direct incentives for sound lending in low- and moderate-income neighborhoods and inner cities, through Bank Insurance Fund assessments, risk-based capital standards, other bank regulatory policies, lending from the Federal Home Loan Bank System, or tax policy incentives;

(4) determine whether the underwriting policies of the secondary market agencies could be revised to encourage bank lending in low- and moderate-income neighborhoods and inner cities; and

(5) recommend legislative or regulatory changes to encourage sound, profitable lending in low- and moderate-income neighborhoods and inner cities.

(b) CONSULTATION.—The Comptroller General shall consult with State and local governments, nonprofit developers, community groups, financial institutions with experience in community lending, State housing finance agencies, and others with expertise in community lending.

(c) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall transmit to the Congress a report containing the findings from the study under subsection (a).

SEC. 548. GOVERNMENT RETURN OF ELECTRONIC PAYMENTS.

Section 3712(a) of title 31, United States Code, is amended—

(1) in paragraph (1)—

(A) by inserting "or that an electronic funds transfer has been acquired by an authorized party" after "If the Secretary of the Treasury determines that a Treasury check has been paid over a forged or unauthorized endorsement";

(B) by inserting "or may reclaim the amount of such electronic funds transfer from the receiving institution or the unauthorized party that acquired the benefits" after "guarantee of endorsements";

(C) by inserting "for payments issued before January 1, 1995" after "date of payment" in subparagraph (A);

(D) by striking "or" at the end of subparagraph (A);

(E) by redesignating subparagraph (B) as subparagraph (C); and

(F) by inserting after subparagraph (A) the following:

"(B) the expiration of the 180-day period beginning on the date of payment for payments issued on or after January 1, 1995; or";

(2) in paragraph (2)—

(A) by striking the following:

"(2) CIVIL ACTIONS.—(A) Except as provided in subparagraph (B), the United States may bring a civil action to enforce" and inserting the following:

"(2) CIVIL ACTIONS.—

"(A) 1 YEAR LIMIT.—Except as provided in subparagraph (B), the United States may bring a civil action—

"(i) to enforce";

(B) by striking the period at the end of subparagraph (A) and inserting "; or

"(ii) against the institution receiving an electronic funds transfer of a Government benefit that has been acquired by an unauthorized party or against the unauthorized party that acquired the benefit, not later than 1 year after the electronic funds transfer is received by the receiving institution.";

(C) in subparagraph (B)—

(i) by striking "(B)" and inserting the following:

"(B) 3-YEAR EXTENSION.—";

(ii) by striking "an endorser"; and

(iii) by striking "against the endorser" and inserting "to the party against which it may bring a civil action under subparagraph (A)".

SEC. 549. EFFECTIVE DATE.

This subtitle shall become effective 180 days after the date of publication of the studies required by sections 534(b) and 535(b) (but in no case later than 12 months after the date of enactment of this Act), except that sections 544 through 546 shall become effective on the date of enactment of this Act.

Subtitle D—Miscellaneous

SEC. 551. HOME EQUITY LOAN CONSUMER PROTECTION ACT AMENDMENTS.

(a) MARGIN DISCLOSURE REQUIREMENT.—Section 127A(a)(2)(A) of the Truth in Lending Act (15 U.S.C. 1637a(a)(2)(A)) is amended by inserting after "rate will be computed" the following: ", including a statement of any margin that applies under the plan,".

(b) Term Changed After Application.—Section 137(d) of the Truth in Lending Act (15 U.S.C. 1647(d)) is amended by inserting after the first sentence the following new sentence: "If a creditor discloses different margins tied to the creditor's criteria for determining the consumer's creditworthiness, the failure to offer the consumer the lowest margin disclosed in connection with creditworthiness constitutes a changed term.".

(c) Effective Date.—Regulations implementing the amendments made by subsections (a) and (b) shall become effective on October 1, 1992.

SEC. 552. DIRECTIVE TO RELIEVE REGULATORY BURDEN.

(a) In General.—Not later than 1 year after the date of enactment of this Act, each appropriate Federal banking agency, in consultation with individuals representing depository institutions, consumers, community groups, and other interested parties, shall—

(1) review the policies, procedures, and recordkeeping and documentation requirements used by the agency to monitor and enforce compliance with designated consumer laws;

(2) determine whether those policies, procedures (including examination procedures), and requirements are unnecessarily burdensome for insured depository institutions;

(3) identify any revisions of those policies, procedures (including examination procedures), and requirements that could reduce burdens on insured depository institutions without in any respect diminishing either compliance with or enforcement of designated consumer laws; and

(4) implement any such revisions.

(b) Innovative Arrangements.—Each appropriate Federal banking agency, in consultation with individuals representing depository institutions, consumers, community groups, and other interested parties, shall identify, and disseminate information regarding, innovative arrangements that can assist insured depository institutions in meeting their obligations under the Community Reinvestment Act of 1977 and other consumer laws, including the use of centralized loan pools to serve the credit needs of low- and moderate-income neighborhoods and families.

(c) Report.—Each appropriate Federal banking agency shall submit to the Congress a report describing the actions taken under subsections (a) and (b) not later than 1 year after the date of enactment of this Act.

(d) Definitions.—For purposes of this section—

(1) the terms "insured depository institution" and "appropriate Federal banking agency" have the same meanings as in section 3 of the Federal Deposit Insurance Act; and

(2) the term "designated consumer laws" means the Community Reinvestment Act of 1977, the Electronic Fund Transfer Act, the Equal Credit Opportunity Act, the Expedited Fund Availability Act, the Fair Housing Act, the Home Mortgage Disclosure Act of 1975, the National Flood Insurance Act of 1968, the Real Estate Settlement Procedures Act of 1974, the Right to Financial Privacy Act of 1978, and the Truth-in-Lending Act.

SEC. 553. EXPEDITED FUNDS AVAILABILITY ACT AMENDMENTS.

(a) AVAILABILITY OF CASH DEPOSITS.—Section 603(a) of the Expedited Funds Availability Act (12 U.S.C. 4002(a)) is amended—

(1) in paragraph (1)(A), by striking "staffed by individuals employed by such institution";

(2) in paragraphs (2)(B)(ii) and (2)(C)(ii), by striking "and is staffed by individuals employed by such institution";

(3) in paragraph (2)(F)—

(A) by striking clause (i); and

(B) by redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively; and

(4) by adding at the end the following:

"(3) EXTENSIONS.—In the case of a deposit subject to paragraph (1)(A) or (2) of this subsection that is deposited in a facility that is not staffed by individuals employed by such institution, the Board may, by regulation or order, extend the time by which such funds must be available for withdrawal by 1 business day if the Board determines that, operational constraints imposed by the location of the facility make it unreasonable to expect the receiving depository institution to make the funds available for withdrawal as provided in paragraph (1)(A) or (2).".

(b) ATM DEPOSITS.—Section 603(e) of the Expedited Funds Availability Act (12 U.S.C. 4002(e)) is amended—

(1) in paragraph (1)(C), by striking "the expiration of the 2-year period beginning on the date of enactment of the Cranston-Gonzalez National Affordable Housing Act" and inserting "September 1, 1994"; and

(2) in paragraph (2)(D), by striking "the expiration of the 2-year period beginning on the date of enactment of the Cranston-Gonzalez National Affordable Housing Act" and inserting "September 1, 1994".

(c) SAFEGUARD EXCEPTIONS.—Section 604 of the Expedited Funds Availability Act (12 U.S.C. 4003) is amended—

(1) in subsection (b), by inserting "(a)(2)," after "subsection";

(2) in subsection (c)(1), by striking "(F)" after "subsections (a)(2)";

(3) in subsection (d), by inserting "(a)(2)," after "subsections";

(4) in subsection (f)(1)(A)(i), by striking "day" and inserting "time period within which"; and

(5) in subsection (f), by adding at the end of paragraph (2) the following:

"(D) In the case of a deposit to which subsection (b)(1) or (b)(2) applies, the depository institution may, for nonconsumer accounts and other classes of accounts, as defined by the Board, that generally have a large number of such deposits, provide notice at or before the time it first determines that the subsection applies.

"(E) In the case of a deposit to which subsection (b)(3) applies, the depository institution may, subject to regulations of the Board, provide notice at the beginning of each time period it determines that the subsection applies. In addition to the requirements contained in paragraph (1)(A), the notice shall specify the time period for which the exception will apply.".

(d) LOSS ALLOCATION.—Section 611(f) of the Expedited Funds Availability Act (21 U.S.C. 4010(f)) is amended—

(1) by inserting "or other entities participating in the payments system, including the States and political subdivisions thereof on which checks are drawn," after "depository institutions"; and

(2) by inserting "finance charges, reasonable attorneys' fees, and other expenses related to the check," after "amount of the check giving rise to loss or liability,".

SEC. 554. TRUTH IN LENDING ACT AMENDMENT.

Section 104 of the Truth in Lending Act (15 U.S.C. 1603) is amended by adding at the end the following:

"(7) Credit transactions involving a consumer whose average annual income is more than $200,000 or whose net assets exceed $1,000,000 at the time of such transaction if the consumer—

"(A) receives an oral explanation and a clear and conspicuous written explanation of the consumer's right to disclosure under this title; and

"(B) signs a waiver of his or her right to such disclosure.

The Board shall prescribe the form and content of explanations and waivers required by this paragraph.".

SEC. 555. HOMEOWNERSHIP AMENDMENTS.

(a) ESTIMATES OF REAL ESTATE SETTLEMENT COSTS.—Section 5(d) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2604(d)) is amended by striking the last sentence and inserting "Such booklet shall be provided by delivering it or placing it in the mail not later than 3 business days after the lender receives the application, but no booklet need be provided if the lender denies the application for credit before the end of the 3-day period.".

(b) ADJUSTABLE RATE MORTGAGE CAPS.—Section 1204(d)(2) of the Competitive Equality Banking Act of 1987 (12 U.S.C. 3806(d)(2)) is amended by striking "any loan" and inserting "any consumer loan".

SEC. 556. DISCUSSION OF LENDING DATA.

(a) PUBLIC SECTIONS OF COMMUNITY REINVESTMENT ACT REPORTS.—Section 807(b)(1)(B) of the Community Reinvestment Act of 1977 (12 U.S.C. 2906(b)(1)(B)) is amended by inserting "and data" after "facts".

(b) OTHER COMMUNITY REINVESTMENT ACT AMENDMENTS.—Section 807 of the Community Reinvestment Act of 1977 (12 U.S.C. 2906) is amended—

(1) in subsection (a)(1), by striking "depository institutions regulatory agency" and inserting "financial supervisory agency";

(2) in subsection (b)(1)(A)—

(A) by striking "depository institutions regulatory agency's" and inserting "financial supervisory agency's"; and

(B) by striking "depository institutions regulatory agencies" and inserting "financial supervisory agencies"; and

(3) in subsection (c), by striking "depository institutions regulatory agency" each place such term appears and inserting "financial supervisory agency".

SEC. 557. GAO REPORT ON DATA COLLECTION UNDER INTERSTATE BRANCHING.

(a) IN GENERAL.—The Comptroller General shall submit to the Congress, not later than 9 months after the date of enactment of this Act, a report that—

(1) examines statutory and regulatory requirements for insured depository institutions to collect and report deposit and lending data; and

(2) determines what modifications to such requirements are needed, so that implementing the interstate branching provisions contained in title III of this Act results in no material loss of information important to regulatory or congressional oversight of insured depository institutions.

(b) CONSULTATION.—The Comptroller General, in preparing the report required by this section, shall consult with individuals representing the appropriate Federal banking agencies, insured depository institutions, consumers, community groups, and other interested parties.

(c) DEFINITIONS.—For purposes of this section, the terms "appropriate Federal banking agency" and "insured depository institution" have the same meanings as in section 3 of the Federal Deposit Insurance Act.

SEC. 558. NOTICE OF BRANCH CLOSING.

Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following new subsection:

"(r) NOTICE TO CUSTOMERS OF BRANCH CLOSING.—

"(1) IN GENERAL.—An insured depository institution that proposes to close a branch shall provide notice of the proposed closing to its customers.

"(2) CONTENTS OF NOTICE.—Notice under paragraph (1) shall consist of—

"(A) posting of a notice in a conspicuous manner on the premises of the branch proposed to be closed during not less than the 30-day period ending on the date proposed for that closing; and

"(B) including a notice in—

"(i) at least 1 of any regular account statements mailed to customers of the branch proposed to be closed, or

"(ii) in a separate mailing,

by not later than the beginning of the 90-day period ending on the date proposed for that closing.".

TITLE VI—FOREIGN BANK SUPERVISION AND REGULATION

Subtitle A—Foreign Bank Supervision Act

SEC. 601. SHORT TITLE.

This subtitle may be cited as the "Foreign Bank Supervision Act of 1991".

SEC. 602. REGULATION OF FOREIGN BANK OPERATIONS.

(a) ESTABLISHMENT AND TERMINATION OF FOREIGN BANK OFFICES IN THE UNITED STATES.—Section 7 of the International Banking Act of 1978 (12 U.S.C. 3105) is amended by adding at the end the following new subsections:

"(e) ESTABLISHMENT OF FOREIGN BANK OFFICES IN THE UNITED STATES.—

"(1) PRIOR APPROVAL REQUIRED.—No foreign bank may establish a branch or an agency, or acquire ownership or control of a commercial lending company, without obtaining the prior approval of the Board.

"(2) POLICY CONSIDERATIONS.—In acting on an application under paragraph (1), the Board shall not make the size of the foreign bank the sole determinant factor and may take into account the needs of the community as well as the length of operation of the foreign bank and its relative size in its home country.

"(3) REQUIRED STANDARDS FOR APPROVAL.—The Board may not approve an application under paragraph (1) unless it determines that—

"(A) the foreign bank engages directly in the business of banking outside the United States and is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country; and

"(B) the foreign bank has furnished to the Board the information it needs to adequately assess the application.

"(4) ADDITIONAL STANDARDS.—In acting on any application under paragraph (1), the Board may consider—

"(A) whether the appropriate authorities in the home country of the foreign bank have consented to the proposed establishment of a branch, agency or commercial lending company in the United States by the foreign bank;

"(B) the financial and managerial resources of the foreign bank, including its experience and capacity to engage in international banking and the competence, experience, and integrity of the officers, directors, and principal shareholders of the company or bank;

"(C) whether the foreign bank has provided the Board with adequate assurances that it will make available to the Board such information on the operations or activities of the foreign bank and any of its affiliates that the Board deems necessary to determine and enforce compliance with this Act, the Bank Holding Company Act of 1956, and other applicable Federal banking statutes; and

"(D) whether the foreign bank and its United States affiliates are in compliance with applicable United States law.

"(5) ESTABLISHMENT OF CONDITIONS.—Consistent with the standards for approval in paragraphs (2), (3), and (4), the Board may impose such conditions on its approval under this subsection as it deems necessary.

"(f) TERMINATION OF FOREIGN BANK OFFICES IN THE UNITED STATES.—

"(1) STANDARDS FOR TERMINATION.—The Board, after notice and opportunity for hearing and notice to any appropriate State supervisory agency or the Office of the Comptroller of the Currency, may order a foreign bank that operates a branch or agency or commercial lending company subsidiary in the United States to terminate the activities of such branch, agency or subsidiary if the Board finds that—

"(A) the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country; or

"(B)(i) there is reasonable cause to believe that such foreign bank, or any affiliate of such foreign bank, has committed a violation of law or engaged in an unsafe or unsound banking practice in the United States; and

"(ii) as a result of such violation or practice, the continued operation of the foreign bank's branch, agency or commercial lending company subsidiary in the United States would not be consistent with the public interest or with the purposes of this Act, the Bank Holding Company Act of 1956, or the Financial Institutions Supervisory Act of 1966.

However, in making its findings under this paragraph, the Board shall not make size the sole determinant factor and may take into account the needs of the community as well as the length of operation of the foreign bank and its relative size in its home country.

"(2) DISCRETION TO DENY HEARING.—The Board may take the action described in paragraph (1) without providing an opportunity for a hearing if it determines that expeditious action is necessary in order to protect the public interest.

"(3) EFFECTIVE DATE OF TERMINATION ORDER.—An order issued under paragraph (1) shall become effective within 120 days of its issuance or such longer time period as the Board may direct.

"(4) COMPLIANCE WITH STATE AND FEDERAL LAW.—Any foreign bank required to terminate activities conducted at offices or commercial lending company subsidiaries in the United States pursuant to this subsection shall comply with the requirements of applicable Federal and State law with respect to procedures for the closure or dissolution of such offices or subsidiaries.

"(5) ENFORCEMENT OF ORDERS.—The Board may in its discretion apply to any United States district court within a jurisdiction in which any office or subsidiary of the foreign bank against which the Board has issued an order under paragraph (1) is located, for the enforcement of any effective and outstanding order issued under this section, and the United States district courts shall have jurisdiction and power to order and require compliance therewith.

"(g) JUDICIAL REVIEW.—

"(1) JURISDICTION OF UNITED STATES COURTS OF APPEALS.—Any foreign bank against which the Board has issued an order under subsection (e) or (f) may obtain a review of such order in the United States Court of Appeals within any circuit wherein such foreign bank operates a branch, agency, or commercial lending company that has been required by such order to terminate its activities, or in the United States Court of Appeals for the District of Columbia Circuit, by filing in the court, within 30 days after the entry of the order of the Board, a petition praying that the order be modified or set aside.

"(2) PROCEDURES FOR JUDICIAL REVIEW.—A copy of such petition shall be forthwith transmitted to the Board by the clerk of the court, as appropriate, and thereupon the Board shall file in the court the record made before the Board, as provided in section 2112 of title 28.

"(3) SCOPE OF JUDICIAL REVIEW.—Upon the filing of such petition, the court shall have jurisdiction to affirm, modify or set aside the order of the Board and to require the Board to take such action with regard to the matter under review as the court deems proper. The findings of the Board as to the facts, if supported by substantial evidence, shall be conclusive.

"(4) EXCLUSIVE JURISDICTION.—Judicial review of any order issued under subsection (e) or (f) shall be exclusively as provided for in this subsection. No other court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any order under this section, or to review, modify, suspend, terminate, or set aside any such order.

"(h) CONSULTATION WITH STATE BANK LICENSING AUTHORITY.—The Board shall request and consider any views of the appropriate State bank licensing authority or the Comptroller of the Currency with respect to an application or action under subsection (e) or (f).

"(i) LIMITATIONS ON POWERS OF STATE BRANCHES AND AGENCIES.—

"(1) IN GENERAL.—After the end of the 1-year period beginning on the date of enactment of the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991, a State branch or State agency may not engage in any type of activity that is not permissible for a Federal branch unless—

"(A) the Board has determined that such activity is consistent with sound banking practice; and

"(B) in the case of an insured branch, the Federal Deposit Insurance Corporation has determined that the activity would pose no significant risk to the deposit insurance fund.

"(2) OTHER AUTHORITY NOT AFFECTED.—This section does not limit the authority of the Board or any State supervisory authority to impose more stringent restrictions.".

(b) STANDARDS FOR APPROVAL OF FEDERAL BRANCHES AND AGENCIES.—Section 4(a) of the International Banking Act of 1978 (12 U.S.C. 3102(a)) is amended—

(1) by striking "(a) Except as provided in section 5," and inserting "(a) PRIOR APPROVAL REQUIRED.—

"(1) APPROVAL OF AGENCY.—Except as provided in section 5,"; and

(2) by adding at the end the following new paragraph:

"(2) BOARD CONDITIONS REQUIRED TO BE INCLUDED.—In considering any application for approval under this subsection, the Board and the Comptroller of the Currency shall include any condition imposed by the Board under section 7(e)(1) as a condition for the approval of such application by the agency.".

(c) STANDARDS FOR APPROVAL OF ADDITIONAL FEDERAL BRANCHES AND AGENCIES.—Section 4(h) of the International Banking Act of 1978 (12 U.S.C. 3102(h)) is amended—

(1) by striking "(h) A foreign bank" and inserting the following:

"(h) ADDITIONAL BRANCHES OR AGENCIES.—

"(1) APPROVAL OF AGENCY REQUIRED.—A foreign bank"; and

(2) by adding at the end the following new paragraph:

"(2) NOTICE TO AND COMMENT BY BOARD.—The appropriate Federal banking agency shall provide the Board with notice and an opportunity for comment on any application to establish an additional Federal branch or Federal agency under this subsection.".

(d) DISAPPROVAL FOR FAILURE TO AGREE TO PROVIDE NECESSARY INFORMATION.—Section 3(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(c)) is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B);

(2) by inserting "(1) COMPETITIVE FACTORS.—" before "The Board shall" the first time it appears;

(3) by inserting "(2) BANKING AND CONVENIENCE AND NEEDS FACTORS.—" before "In every case";

(4) by inserting "(4) TREATMENT OF CERTAIN BANK STOCK LOANS.—" before "Notwithstanding"; and

(5) by inserting after paragraph (2) the following new paragraph:

"(3) SUPERVISORY FACTORS.—The Board may disapprove any application under this section if the company or companies fail to provide the Board with adequate assurances that they will make available to the Board such information on the operations or activities of such company or companies and any affiliate of such company or companies that the Board deems necessary to determine and enforce compliance with this Act, or, in the case of an application involving a foreign bank, the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country.".

(e) CONFORMING AMENDMENTS.—

(1) AFFILIATE DEFINED.—Section 1(b)(13) of the International Banking Act of 1978 (12 U.S.C. 3101(13)) is amended—

(A) by inserting "affiliate," after "the terms" the first time it appears; and

(B) by inserting " 'securities affiliate'," before "and 'subsidiary' ".

(2) Representative office defined.—Section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101) is amended by inserting at the end of the following new paragraph:

"(15) 'representative office' means any office of a foreign bank located in any State of the United States that is not a Federal branch, Federal agency, State branch, State agency or subsidiary of a foreign bank.".

SEC. 603. CONDUCT AND COORDINATION OF EXAMINATIONS.

(a) Authority of Board To Conduct and Coordinate Examinations.—Section 7(c) of the International Bank Act of 1978 (12 U.S.C. 3105(b)) is amended—

(1) by striking paragraph (1) and inserting in lieu thereof the following new paragraph:

"(1) Examination of branches, agencies and affiliates.—

"(A) In general.—The Board may make examinations of each branch or agency of a foreign bank, of each commercial lending company or bank controlled by one or more foreign banks or by one or more foreign companies that control a foreign bank, and of any other office or affiliate of a foreign bank conducting business in the United States or any territory or dependency of the United States. The cost of such examinations shall be assessed against and paid by such foreign bank or company, as the case may be.

"(B) Coordination of examinations.—The Board shall seek to coordinate its examinations under this paragraph with the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and appropriate State supervisory authorities, including requesting, when the Board deems appropriate simultaneous examinations of all offices of a foreign bank and its affiliates operating in the United States. Nothing in this subparagraph shall be construed to prevent the Board from conducting any examination under subparagraph (A) that it deems appropriate.

"(C) Annual on-site examination.—Each branch or agency of a foreign bank shall be examined at least once during each 12-month period (beginning on the date the most recent examination of such branch or agency ended) in an on-site examination. In connection with such examination, the Board shall review the worldwide capital level of the foreign bank in order to determine whether the financial resources of such bank or company, including the capital level, are equivalent to those of a domestic bank holding company that would be permitted to engage in the activities the foreign bank conducts in the United States. Any determination that the foreign bank meets the capital equivalency requirement shall be made after consultation with the Secretary of the Treasury. An examination by the

Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the appropriate State supervisory authority may be used to satisfy the requirements of this subparagraph.

"(D) EFFECT OF FAILURE TO MAINTAIN EQUIVALENT CAPITAL.—If the Board finds at any time that any foreign bank does not have the required level of capital—

"(i) to engage in securities activities, the foreign branch or agency shall be treated as an insured depository institution under section 10(d) of the Bank Holding Company Act of 1956 in the same manner as an affiliated insured depository institution that becomes undercapitalized; and

"(ii) to engage in interstate banking operations, the Board shall—

"(I) review the operations of the foreign bank in the United States to determine whether the conditions for termination in subsection (f)(1)(C) are met or requirements for increasing capital or improving management should be imposed; and

"(II) to the extent that requirements imposed under subclause (I) can only be adequately verified if banking activities are carried out in a domestic banking subsidiary, require the foreign bank or company controlling the foreign bank to conduct all its banking activities in the United States through such a subsidiary."; and

(2) in paragraph (2), by inserting "REPORTING REQUIREMENTS.—" before "Each branch".

(b) COORDINATION OF EXAMINATIONS.—Section 4(b) of the International Banking Act of 1978 (12 U.S.C. 3102(b)) is amended by adding at the end thereof the following new sentence: "The Office of the Comptroller of the Currency shall coordinate examinations of the Federal branches and agencies of foreign banks with examinations conducted by the Board under section 7(c)(1) of this Act and, to the extent possible, shall participate in any simultaneous examination of the United States operations of a foreign bank requested by the Board under section 7(c)(1) of that Act.".

(c) PARTICIPATION IN COORDINATED EXAMINATIONS.—Section 10(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1820(b)(2)) is amended by adding at the end the following new sentence: "The Board of Directors shall coordinate examinations of insured State branches of foreign banks with examinations conducted by the Board of Governors of the Federal Reserve System under section 7(c)(1) of the International Banking Act of 1978 and, to the extent possible, shall participate in any simultaneous examinations of the United States operations of a foreign bank requested by the Board of Governors under that section.".

SEC. 604. SUPERVISION OF FOREIGN BANKS' REPRESENTATIVE OFFICES.

Section 10 of the International Banking Act of 1978 (12 U.S.C. 3107) is amended by striking subsections (a) and (b) and inserting the following new subsections:

"(a) PRIOR APPROVAL TO ESTABLISH REPRESENTATIVE OFFICES.—

"(1) IN GENERAL.—No foreign bank may establish a representative office without the prior approval of the Board.

"(2) STANDARDS FOR APPROVAL.—In acting on any application under this paragraph to establish a representative office, the Board shall take into account the standards for approval set forth in section 7(e) and may impose any additional requirements that are necessary to carry out the purposes of this Act.

"(b) TERMINATION OF REPRESENTATIVE OFFICES.—The Board may order the termination of the activities of a representative office of a foreign bank on the basis of the same standards, procedures, and requirements as apply under, and subject to judicial review as provided in, section 7(f).

"(c) EXAMINATIONS.—The Board may make examinations of each representative office of a foreign bank, the cost of which shall be assessed against and paid by such foreign bank.

"(d) COMPLIANCE WITH STATE LAW.—This Act does not authorize the establishment of a representative office in any State in contravention of State law.".

SEC. 605. REPORTING STOCK LOANS.

Section 7(j)(9) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)(9)) is amended to read as follows:

"(9) REPORTING OF STOCK LOANS.—

"(A) REPORT REQUIRED.—Any financial institution and any affiliate thereof that has credit outstanding to any person or group of persons secured or to be secured by shares of an insured depository institution shall file a consolidated report with the appropriate Federal banking agency for the insured depository institution if such extensions of credit by the financial institution and its affiliates, in the aggregate, are secured or to be secured by 25 percent or more of any class of shares of the same insured depository institution.

"(B) DEFINITIONS.—For purposes of this paragraph—

"(i) FINANCIAL INSTITUTION.—The term 'financial institution' means any insured depository institution and any foreign bank that is subject to the provisions of the Bank Holding Company Act of 1956 by virtue of section 8(a) of the International Banking Act of 1978.

"(ii) CREDIT OUTSTANDING.—The term 'credit outstanding' shall include—

"(I) any loan or extension of credit,

"(II) the issuance of a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit, and

"(III) any other type of transaction that provides credit or financing to the person or group of persons.

"(iii) GROUP OF PERSONS.—The term 'group of persons' shall include any number of persons that the financial institution reasonably believes—

"(I) are acting together, in concert, or with one another to acquire or control shares of the same insured depository institution, including an acquisition of shares of the same insured depository institution at approximately the same time under substantially the same terms; or

"(II) have made, or propose to make, a joint filing under section 13 of the Securities Exchange Act of 1934 regarding ownership of the shares of the same insured depository institution.

"(C) INCLUSION OF SHARES HELD BY THE FINANCIAL INSTITUTION.—Any shares of the insured depository institution held by the financial institution or any of its affiliates as principal shall be included in the calculation of the number of shares in which the financial institution or its affiliates has a security interest for purposes of subparagraph (A).

"(D) TIMING AND CONTENT OF REPORT; COPY TO APPROPRIATE AGENCY FOR THE LENDING FINANCIAL INSTITUTION.—The report required by this paragraph shall be a consolidated report on behalf of the financial institution and all of its affiliates, and shall be filed in writing within 30 days of the time the financial institution or any of its affiliates believes that the 25 percent level referred to in subparagraph (A) has been met or exceeded. The report shall indicate the number and percentage of shares securing each relevant extension of credit, the identity of the borrower, and the number of shares held as principal by the financial institution and any of its affiliates. A copy of the report shall be filed with the appropriate Federal banking agency for the financial institution. Each appropriate Federal banking agency may require any additional information necessary to carry out its supervisory responsibilities.

"(E) EXCEPTIONS.—

"(i) EXCEPTION WHERE INFORMATION PROVIDED BY BORROWER.—Notwithstanding subparagraph (A), a financial institution and its affiliates shall not be required to report a transaction under this paragraph if the person or group of persons has disclosed the amount borrowed from the financial institution and its affiliates and the security interest of the financial institution and its affiliates to the appropriate Federal banking agency for the insured depository institution in connection with a notice filed under this subsection, an application filed under the Bank Holding Company Act of 1956 or the Savings and Loan Holding Company Act, or any other formal application that is filed with the appropriate Federal banking agency for the insured depository institution as a substitute for a notice under this subsection, such as an application for deposit insurance, membership in the Federal Reserve System, or a national bank charter.

"(ii) EXCEPTION FOR SHARES OWNED FOR MORE THAN 1 YEAR.—Notwithstanding subparagraph (A), a financial institution and its affiliates shall not be required to report a transaction involving a person or group of persons that has been the owner or owners of record of the stock for a period of 1 year or more or where the stock is that of a newly chartered bank prior to its opening.".

SEC. 606. COOPERATION WITH FOREIGN SUPERVISORS.

The International Banking Act of 1978 (12 U.S.C. 3101 et seq.) is amended by adding at the end the following new section:

"SEC. 15. COOPERATION WITH FOREIGN SUPERVISORS.

"(a) DISCLOSURE OF SUPERVISORY INFORMATION TO FOREIGN SUPERVISORS.—Notwithstanding any other provision of law, the Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency may disclose information obtained in the course of exercising supervisory or examination authority to any foreign bank regulatory or supervisory authority if such disclosure—

"(1) is determined to be necessary or appropriate by such agency; and

"(2) would not prejudice the interests of the United States.

"(b) REQUIREMENT OF CONFIDENTIALITY.—Prior to disclosure of any information to a foreign authority, the United States agency shall obtain as necessary the agreement of such foreign authority to maintain the confidentiality of such information to the extent possible under applicable law.

"(c) INFORMATION OBTAINED FROM FOREIGN SUPERVISORS.—Except as provided in subsection (d), the Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency shall not be compelled to disclose information obtained from a foreign supervisor if—

"(1) the foreign supervisor has in good faith determined and represented to such United States agency that public disclosure of such information would violate the laws applicable to that supervisor, and

"(2) the United States agency obtains such information pursuant to—

"(A) such procedure as the United States agency may authorize for use in connection with the administration or enforcement of the banking laws; or

"(B) a memorandum of understanding.

For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552.

"(d) SAVINGS PROVISION.—Nothing in this section shall authorize the Board, the Federal Deposit Insurance Corporation, or the Office of the Comptroller of the Currency to withhold information from the Congress or prevent such United States agency from complying with an order of a court of the United States in an action commenced by the United States or by such United States agency.".

SEC. 607. PENALTIES.

The International Banking Act of 1978 (12 U.S.C. 3101 et seq.), as amended by section 606, is amended by adding at the end the following new section:

"SEC. 16. PENALTIES.

"(a) CIVIL MONEY PENALTY.—

"(1) In general.—Any foreign bank, and any branch, agency, other office, or subsidiary of a foreign bank that violates, and any individual who participates in a violation of, any provision of this Act, or any regulation or order issued pursuant thereto, shall forfeit and pay a civil penalty of not more than $25,000 for each day during which such violation continues.

"(2) Assessment procedures.—Any penalty imposed under paragraph (1) may be assessed and collected by the appropriate Federal banking agency in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1818(i)(2)) for penalties imposed (under such section), and any such assessments shall be subject to the provisions of such section.

"(3) Hearing.—The foreign bank, branch, agency, other office, or subsidiary of a foreign bank, or other person against whom any penalty is assessed under this section shall be afforded an agency hearing if such foreign bank, branch, agency, other office, or subsidiary, or person submits a request for a hearing within 20 days after the issuance of the notice of assessment. Section 8(h) of the Federal Deposit Insurance Act (12 U.S.C. 1818(h)) shall apply to any proceeding under this section.

"(4) Disbursement.—All penalties collected under authority of this section shall be deposited into the Treasury.

"(5) Violate defined.—For purposes of this section, the term 'violate' includes taking any action (alone or with others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

"(6) Regulations.—The appropriate Federal banking agency shall prescribe regulations establishing such procedures as may be necessary to carry out this section.

"(b) Notice Under This Section After Separation From Service.—The resignation, termination of employment or participation, or separation of an institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act (12 U.S.C. 1813(u)) with respect to a foreign bank, or branch, agency, other office, or subsidiary of a foreign bank (including a separation caused by the termination of a location in the United States) shall not affect the jurisdiction or authority of the appropriate Federal banking agency to issue any notice or to proceed under this section against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such foreign bank or branch, agency, other office, or subsidiary of a foreign bank (whether such date occurs before, on, or after the date of enactment of this section).

"(c) Penalty for Failure To Make Reports.—

"(1) First tier.—Any foreign bank, or branch, agency, other office, or subsidiary of a foreign bank, that—

"(A) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such error—

"(i) fails to make, submit, or publish such reports or information as may be required under this Act or under regulations prescribed by the appropriate Federal banking agency under this Act, within the period of time specified by the agency; or

"(ii) submits or publishes any false or misleading report or information; or

"(B) inadvertently transmits or publishes any report that is minimally late, shall be subject to a penalty of not more than $2,000 for each day during which such failure continues or such false or misleading information is not corrected. The foreign bank, or branch, agency, other office, or subsidiary of a foreign bank, shall have the burden of proving that an error was inadvertent and that a report was inadvertently transmitted or published late.

"(2) SECOND TIER.—Any foreign bank, or branch, agency, other office, or subsidiary of a foreign bank, that—

"(A) fails to make, submit, or publish such reports or information as may be required under this Act or under regulations prescribed by the appropriate Federal banking agency pursuant to this Act, within the time period specified by the agency; or

"(B) submits or publishes any false or misleading report or information,

in a manner not described in paragraph (1) shall be subject to a penalty of not more than $20,000 for each day during which such failure continues or such false or misleading information is not corrected.

"(3) THIRD TIER.—Notwithstanding paragraph (2), if any company knowingly or with reckless disregard for the accuracy of any information or report described in paragraph (2) submits or publishes any false or misleading report or information, the appropriate Federal banking agency may, in its discretion, assess a penalty of not more than $1,000,000 or 1 percent of total assets of such foreign bank, or branch, agency, other office, or subsidiary of a foreign bank, whichever is less, for each day during which such failure continues or such false or misleading information is not corrected.

"(4) ASSESSMENT OF PENALTIES.—Any penalty imposed under paragraphs (1), (2), or (3) shall be assessed and collected by the appropriate Federal banking agency in the manner provided in subsection (a) of this section (for penalties imposed under such subsection) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such subsection.

"(5) HEARING.—Any foreign bank, or branch, agency, other office, or subsidiary of a foreign bank, against which any penalty is assessed under this subsection shall be afforded an agency hearing if such foreign bank, or branch, agency, other office, or subsidiary of a foreign bank, submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) of the Federal Deposit Insurance Act (12 U.S.C. 1818(h)) shall apply to any proceeding under this subsection.".

SEC. 608. POWERS OF AGENCIES RESPECTING APPLICATIONS, EXAMINATIONS, AND OTHER PROCEEDINGS.

Section 13(b) of the International Banking Act of 1978 (12 U.S.C. 3108(b)) is amended—

(1) by striking the heading and replacing it with "ENFORCEMENT.—";

(2) by inserting "(1)" before "In"; and

(3) by adding at the end the following new paragraph:

"(2) POWERS RESPECTING APPLICATIONS, EXAMINATIONS, AND OTHER PROCEEDINGS.—

"(A) IN GENERAL.—In the course of or in connection with an application, examination, investigation, or other proceeding under this Act, the Board, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation, as appropriate, or any member or designated representative thereof, including any person designated to conduct any hearing under this Act, shall have the power to administer oaths and affirmations, to take or to cause to be taken depositions, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum.

"(B) RULEMAKING AUTHORITY.—The Board, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation shall have the authority to issue rules and regulations to effectuate the purposes of section 13(b)(2)(A).

"(C) SUBPOENA POWER.—The attendance of witnesses and the production of documents provided for in this subsection may be required by subpoena or subpoena duces tecum from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted.

"(D) JUDICIAL REVIEW.—Any party to proceedings under this Act may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted, or where the witness resides or carries on business, for the enforcement of any subpoena or subpoena duces tecum issued pursuant to this subsection, and such courts shall have jurisdiction and power to require compliance therewith.

"(E) WITNESS FEES.—Witnesses subpoenaed under this subsection shall be paid the same fees and mileage that are paid to witnesses in the district courts of the United States.

"(F) SERVICE OF PROCESS.—Any service required under this subsection may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the agency may by regulation or otherwise provide.

"(G) ATTORNEYS' FEES.—Any court having jurisdiction of any proceeding instituted under this Act may allow to any party that succeeds in having an agency order modified or set aside such reasonable expenses and attorneys' fees as it deems just and proper.

"(H) Penalties for not complying for each day that such failure or refusal continues.—Any person who willfully shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in such person's power so to do, in obedience to the subpoena of the agency, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $10,000 for each day that such failure or refusal continues, or to imprisonment for a term of not more than 1 year, or both.".

SEC. 609. PENALTIES FOR FAILURE TO COMPLY WITH AGENCY SUBPOENA.

(a) Bank Holding Company Act.—Section 5(f) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(f)) is amended in the last sentence by striking "$1000" and inserting "$10,000 for each day that such failure or refusal continues".

(b) Federal Deposit Insurance Act.—Section 8(n) of the Federal Deposit Insurance Act (12 U.S.C. 1818(n)) is amended in the last sentence by striking "$1,000" and inserting "$10,000 for each day that such failure or refusal continues".

SEC. 610. CLARIFYING MANAGERIAL STANDARDS IN THE BANK HOLDING COMPANY ACT OF 1956.

Section 3(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(c)) is amended by adding at the end of paragraph (2) (as redesignated by section 602(d)) the following new sentence: "Consideration of the managerial resources of a company or bank shall include consideration of the competence, experience, and integrity of the officers, directors, and principal shareholders of the company or bank.".

SEC. 611. AUTHORITY OF FEDERAL BANKING AGENCIES TO ENFORCE CONSUMER STATUTES.

(a) Amendments to the Home Mortgage Disclosure Act.—

(1) Maintenance of records and public disclosure.—Section 304(h) of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2803(h)) is amended—

(A) by striking paragraph (1) and inserting the following new paragraph:

"(1) the Office of the Comptroller of the Currency for national banks and Federal branches and Federal agencies of foreign banks;"; and

(B) by striking paragraph (3) and inserting the following new paragraph:

"(3) the Federal Deposit Insurance Corporation for banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), mutual savings banks, insured State branches of foreign banks, and any other depository institution described in section 303(2)(A) which is not otherwise referred to in this paragraph;".

(2) Enforcement.—Section 305(b) of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2804(b)) is amended—

(A) by striking paragraph (1) and inserting the following new paragraph:

"(1) section 8 of the Federal Deposit Insurance Act, in the case of—

"(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

"(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act, by the Board; and

"(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), mutual savings banks as defined in section 3(f) of the Federal Deposit Insurance Act (12 U.S.C. 1813(f)), insured State branches of foreign banks, and any other depository institution not referred to in this paragraph or paragraph (2) or (3) of this subsection, by the Board of Directors of the Federal Deposit Insurance Corporation;"; and

(B) by adding at the end the following:

"The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).".

(b) AMENDMENT TO THE TRUTH IN LENDING ACT.—Section 108(a) of the Truth in Lending Act (15 U.S.C. 1607(a)) is amended—

(1) by striking paragraph (1) and inserting the following new paragraph:

"(1) section 8 of the Federal Deposit Insurance Act, in the case of—

"(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

"(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act, by the Board; and

"(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation."; and

(2) by adding at the end the following:

"The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).".

(c) AMENDMENT TO THE FAIR CREDIT REPORTING ACT.—Section 621(b) of the Fair Credit Reporting Act (15 U.S.C. 1681s(b)) is amended—

(1) by striking paragraph (1) and inserting the following new paragraph:

"(1) section 8 of the Federal Deposit Insurance Act, in the case of—

"(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

"(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act, by the Board of Governors of the Federal Reserve System; and

"(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation."; and

(2) by adding at the end the following:

"The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).".

(d) AMENDMENT TO THE EQUAL CREDIT OPPORTUNITY ACT.—Section 704(a) of the Equal Credit Opportunity Act (15 U.S.C. 1691c(a)) is amended—

(1) by striking paragraph (1) and inserting the following new paragraph:

"(1) section 8 of the Federal Deposit Insurance Act, in the case of—

"(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

"(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act, by the Board; and

"(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation."; and

(2) by adding at the end the following:

"The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).".

(e) AMENDMENT TO THE FAIR DEBT COLLECTION PRACTICES ACT.—Section 814(b) of the Fair Debt Collection Practices Act (15 U.S.C. 1692*l*(b)) is amended—

(1) by striking paragraph (1) and inserting the following:

"(1) section 8 of the Federal Deposit Insurance Act, in the case of—

"(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

"(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act, by the Board of Governors of the Federal Reserve System; and

"(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation."; and

(2) by adding at the end the following:

"The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).".

(f) AMENDMENT TO THE ELECTRONIC FUND TRANSFER ACT.—Section 917(a) of the Electronic Fund Transfer Act (15 U.S.C. 1693o(a)) is amended—

(1) by striking paragraph (1) and inserting the following:

"(1) section 8 of the Federal Deposit Insurance Act, in the case of—

"(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

"(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act, by the Board; and

"(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;"; and

(2) by adding at the end the following:

"The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).".

(g) AMENDMENT TO THE FEDERAL TRADE COMMISSION ACT.—

(1) DEFINITIONS.—Section 4 of the Federal Trade Commission Act (15 U.S.C. 44) is amended by adding at the end the following new paragraph:

" 'Banks' means the types of banks and other financial institutions referred to in section 18(f)(2)."

(2) ENFORCEMENT.—Section 18(f) of the Federal Trade Commission Act (15 U.S.C. 57a(f)) is amended—

(A) by striking paragraph (2) and inserting the following:

"(2) ENFORCEMENT.—Compliance with regulations prescribed under this subsection shall be enforced under section 8 of the Federal Deposit Insurance Act, in the case of—

"(A) national banks, banks operating under the code of law for the District of Columbia, and Federal branches and Federal agencies of foreign banks, by the divisions of consumer affairs established by the Office of the Comptroller of the Currency;

"(B) member banks of the Federal Reserve System (other than national banks and banks operating under the code of law for the District of Columbia), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act, by the division of consumer affairs established by the Board of Governors of the Federal Reserve System; and

"(C) banks insured by the Federal Deposit Insurance Corporation (other banks referred to in subparagraph (A) or (B)) and insured State branches of foreign banks, by the division of consumer affairs established by the Board of Directors of the Federal Deposit Insurance Corporation."; and

(B) by adding at the end the following:

"The terms used in this paragraph that are not defined in the Federal Trade Commission Act or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).".

(h) AMENDMENT TO THE EXPEDITED FUNDS AVAILABILITY ACT.—Section 610(a) of the Expedited Funds Availability Act (12 U.S.C. 4009(a)) is amended—

(1) by striking paragraph (1) and inserting the following:

"(1) section 8 of the Federal Deposit Insurance Act in the case of—

"(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

"(B) member banks of the Federal Reserve System (other than national banks), and offices, branches, and agencies of foreign banks located in the United States (other than Federal branches, Federal agencies, and insured State branches of foreign banks), by the Board of Governors of the Federal Reserve System; and

"(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;"; and

(2) by adding at the end the following:

"The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).".

SEC. 612. CRIMINAL PENALTY FOR VIOLATING THE INTERNATIONAL BANKING ACT OF 1978.

The International Banking Act of 1978 (12 U.S.C. 3101 et seq.), as amended by sections 606 and 607, is amended by adding at the end the following:

"SEC. 17. CRIMINAL PENALTY.

"Whoever, with the intent to deceive, to gain financially, or to cause financial gain or loss to any person, knowingly violates any provision of this Act or any regulation or order issued by the appropriate Federal banking agency under this Act shall be imprisoned not more than 5 years or fined not more than $1,000,000 for each day during which a violation continues, or both.".

Subtitle B—Regulation of Foreign Banks and Subsidiaries Seeking Expanded Securities Powers

SEC. 621. AMENDMENTS TO THE INTERNATIONAL BANKING ACT OF 1978.

(a) TREATMENT OF FOREIGN BANKS.—Section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)) is amended to read as follows:

"(a) TREATMENT OF FOREIGN BANKS AS HOLDING COMPANIES.—

"(1) IN GENERAL.—Except as otherwise provided in this section, any foreign bank which—

"(A) maintains a branch or agency in the United States; or

"(B) directly or indirectly owns or controls a commercial lending company organized under State law,

shall be subject to the Bank Holding Company Act of 1956 and sections 105 and 106 of the Bank Holding Company Act Amendments of 1970 in the same manner and to the same extent as a bank holding company.

"(2) TREATMENT OF FOREIGN BANK HOLDING COMPANIES.—Any company that directly or indirectly owns or controls a foreign

bank described in paragraph (1) shall be subject to the Bank Holding Company Act of 1956 in the same manner and to the same extent as a company that owns or controls a bank holding company.

"(3) EQUIVALENT CAPITAL AND OTHER FINANCIAL REQUIREMENTS.—

"(A) DETERMINATION REQUIRED.—In reviewing any notice under section 4 of the Bank Holding Company Act of 1956 by any foreign bank or company controlling a foreign bank to which this section applies, the Board shall disapprove the notice unless it determines that the financial resources of such bank or company, including the capital level, are equivalent to those of a domestic bank holding company that would be permitted to engage in such activities, after consultation with the Secretary of the Treasury regarding capital equivalency.

"(B) CRITERIA FOR DETERMINATION.—In making the determination in subparagraph (A), the Board shall—

"(i) take into account differences in domestic and foreign accounting standards; and

"(ii) assure that competitive equivalence between domestic and foreign banks is maintained.

"(C) REQUIREMENT FOR A SEPARATE SUBSIDIARY.—If the Board, pursuant to subparagraph (A), finds that adherence to capital requirements equivalent to those required of a domestic bank holding company that would be permitted to engage in securities activities can only be verified if banking activities are carried out in a domestic banking subsidiary, it may require that—

"(i) the foreign bank or company controlling a foreign bank may, as a condition of approval, engage in banking in the United States only indirectly through direct or indirect subsidiaries of a single bank holding company; and

"(ii) all activities of the foreign bank or company in the United States conducted under the authority of the Bank Holding Company Act of 1956, other than those authorized by section 2(h) or 4(c)(9) of such Act, shall be carried out directly or indirectly by that bank holding company.

"(4) FIREWALL RESTRICTIONS APPLICABLE.—A foreign bank and any securities affiliate of a foreign bank shall be subject to the safeguards contained in section 10(f) of the Bank Holding Company Act of 1956 in the same manner and to the same extent as an insured depository institution and its securities affiliate.".

(b) AUTHORITY TO TERMINATE GRANDFATHER RIGHTS UNDER INTERNATIONAL BANKING ACT OF 1978.—Section 8(c)(1) of the International Banking Act of 1978 (12 U.S.C. 3106(c)(1)) is amended by adding at the end the following new sentence: **"Notwithstanding any other provision of this paragraph or any other provision of law, the Board shall terminate any authority conferred under this subsection on any foreign bank or company with respect to an affiliate engaged in the business of underwriting, distributing, or other-**

wise buying or selling stocks, bonds, and other securities in the United States, when such activities are authorized for bank holding companies in the United States.".

(c) GUIDELINES ON EQUIVALENCE OF FOREIGN BANK CAPITAL.—Section 7 of The International Banking Act of 1978 (12 U.S.C. 3105) is amended by adding at the end the following new subsection:

"(e) GUIDELINES ON EQUIVALENCE OF FOREIGN BANK CAPITAL.—Within 180 days after enactment of this subsection, the Board and the Secretary of the Treasury shall jointly publish in the Federal Register and submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a report—

"(1) analyzing the capital standards contained in the framework for measurement of capital adequacy established by the Basle Committee on Banking Supervision, foreign regulatory capital standards that apply to foreign banks conducting banking operations in the United States, and the relationship of the Basle and foreign standards to risk-based capital and leverage requirements for United States banks; and

"(2) establishing guidelines for the adjustments to be used by the Board in converting data on the capital of such foreign banks to the equivalent risk-based capital and leverage requirements for United States banks for purposes of determining whether a foreign bank's capital level is equivalent to that imposed on United States banks for purposes of determinations under sections 5(a), 7(c), and 8(a).

An update shall be prepared annually explaining any changes in the analysis under paragraph (1) and resulting changes in the guidelines pursuant to paragraph (2).".

SEC. 622. STUDY AND REPORT ON SUBSIDIARY REQUIREMENTS FOR FOREIGN BANKS.

(a) IN GENERAL.—The Secretary of the Treasury (hereafter referred to as the "Secretary"), in consultation with the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Attorney General, shall conduct a study of whether foreign banks should be required, as a general rule, to conduct banking operations in the United States through subsidiaries rather than branches. In conducting the study, the Secretary shall take into account—

(1) differences in accounting and regulatory practices abroad and the difficulty of assuring that the foreign bank meets United States capital and management standards and is adequately supervised;

(2) implications for the deposit insurance system;

(3) competitive equity considerations;

(4) national treatment of foreign financial institutions;

(5) the need to prohibit money laundering and illegal payments;

(6) safety and soundness considerations;

(7) implications for international negotiations for liberalized trade in financial services; and

(8) the tax liability of foreign banks.

(b) **Report Required.**—Not later than 1 year after the date of enactment of this Act, the Secretary shall transmit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a report on the results of the study under subsection (a). Any additional or dissenting views of participating agencies shall be included in the report.

(c) **Change in Policy.**—If the participants in the study under subsection (a) agree that, in furtherance of the objectives set out in the study, foreign banks should be required to conduct their activities in the United States through a domestic banking subsidiary, the Board of Governors of the Federal Reserve System is authorized to implement the requirement by regulation. If individual participants expressing additional or dissenting views under subsection (b) conclude that changes in law or policy are needed to further the objectives set out in the study, those participants shall submit legislative proposals to the Congress within 30 days of the submission of the report under subsection (b).

Subtitle C—Fair Trade in Financial Services

SEC. 631. SHORT TITLE.

This title may be cited as the "Fair Trade in Financial Services Act of 1991".

SEC. 632. EFFECTUATING THE PRINCIPLE OF NATIONAL TREATMENT FOR BANKS AND BANK HOLDING COMPANIES.

The International Banking Act of 1978 (12 U.S.C. 3101 et seq.) is amended by adding at the end the following:

"SEC. 18. NATIONAL TREATMENT.

"(a) **Purpose.**—This section is intended to encourage foreign countries to accord national treatment to United States banks and bank holding companies that operate or seek to operate in those countries, and thereby end discrimination against United States banks and bank holding companies.

"(b) **Reports Required.**—

"(1) **Contents of report.**—The Secretary of the Treasury shall, not later than December 1, 1992, and biennially thereafter, submit to the Congress a report—

"(A) identifying any foreign country—

"(i) that does not accord national treatment to United States banks and bank holding companies—

"(I) according to the most recent report under section 3602 of the Omnibus Trade and Competitiveness Act of 1988; or

"(II) on the basis of more recent information that the Secretary deems appropriate indicating a failure to accord national treatment; and

"(ii) with respect to which no determination under subsection (d)(1) is in effect;

"(B) explaining why the Secretary has not made, or has rescinded, such a determination with respect to that country; and

"(C) describing the results of any negotiations conducted pursuant to subsection (c)(1) with respect to that country.

"(2) SUBMISSION OF REPORT.—

"(A) IN GENERAL.—The report required by paragraph (1) may be submitted as part of a report submitted under section 3602 of the Omnibus Trade and Competition Act of 1988.

"(B) MOST RECENT REPORT DEFINED.—If the report required by paragraph (1) is submitted as part of a report under such section 3602, that report under section 3602 shall be the 'most recent report' for purposes of paragraph (1)(A)(i)(I).

"(c) NEGOTIATIONS REQUIRED.—

"(1) IN GENERAL.—The Secretary of the Treasury shall initiate negotiations with any foreign country—

"(A) in which, according to the most recent report under section 3602 of the Omnibus Trade and Competitiveness Act of 1988, there is a significant failure to accord national treatment to United States banks and bank holding companies; and

"(B) with respect to which no determination under subsection (d)(1) is in effect,

to ensure that such country accords national treatment to United States banks and holding companies.

"(2) NEGOTIATIONS NOT REQUIRED.—Paragraph (1) does not require the Secretary of the Treasury to initiate negotiations with a foreign country if the Secretary—

"(A) determines that such negotiations would be fruitless or would impair national economic interests; and

"(B) gives written notice of that determination to the chairman and ranking minority member of the Committee on Banking, Housing, and Urban Affairs of the Senate and of the Committee on Banking, Finance and Urban Affairs of the House of Representatives.

"(d) DISCRETIONARY SANCTIONS.—

"(1) SECRETARY'S DETERMINATION.—The Secretary of the Treasury may, at any time, publish in the Federal Register a determination that a foreign country does not accord national treatment to United States banks or bank holding companies.

"(2) ACTION BY AGENCY.—If the Secretary of the Treasury has published in the Federal Register (and has not rescinded) a determination under paragraph (1) with respect to a foreign country, any Federal banking agency—

"(A) may include that determination and the conclusions of the reports under section 3602 of the Omnibus Trade and Competitiveness Act of 1988 and other reports under subsection (b)(1) among the factors the agency considers in evaluating any application or notice filed by a person of that foreign country; and

"(B) may, in consultation with the Secretary, deny the application or disapprove the notice.

"(3) REVIEW.—The Secretary of the Treasury may, at any time, and shall, annually, review any determination under paragraph (1) and decide whether that determination should be rescinded.

"(e) PREVENTING EXISTING ENTITIES FROM BEING USED TO EVADE THIS SECTION.—

"(1) IN GENERAL.—If a determination under subsection (d)(1) is in effect with respect to a foreign country, no bank, foreign bank described in section 8(a), branch, agency, commercial lending company, or other affiliated entity that is a person of that country shall, without prior approval pursuant to paragraph (3) or (4), directly or indirectly, in the United States—

"(A) commence any line of business in which it was not engaged as of the date on which that determination was published in the Federal Register; or

"(B) conduct business from any location at which it did not conduct business as of that date.

"(2) EXCEPTION.—Paragraph (1) shall not apply with respect to transactions under section 2(h)(2) of the Bank Holding Company Act of 1956.

"(3) STATE-SUPERVISED ENTITIES.—

"(A) This paragraph shall apply if—

"(i) the entity in question is an uninsured State bank or branch, a State agency, or a commercial lending company;

"(ii) the State requires the entity to obtain the prior approval of the State bank supervisor before engaging in the activity described in subparagraph (A) or (B) of paragraph (1); and

"(iii) no other provision of Federal law requires the entity to obtain the prior approval of a Federal banking agency before engaging in that activity.

"(B) The State bank supervisor shall consult about the application with the appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act). If the State bank supervisor approves the application, the supervisor shall notify the appropriate Federal banking agency and provide the agency with a copy of the record of the application. During the 45-day period beginning on the date on which the appropriate Federal banking agency receives the record, the agency, after consultation with the State bank supervisor—

"(i) may include the determination under subsection (d)(1) and the conclusions of the reports under section 3602 of the Omnibus Trade and Competitiveness Act of 1988 and other reports under subsection (b)(1) of this section among the factors the agency considers in evaluating the application; and

"(ii) may issue an order disapproving the activity in question based upon that determination and in consultation with the Secretary of the Treasury.

The period for disapproval under clause (ii) may, in the agency's discretion, be extended for not more than 45 days.

"(4) Federal approval.—If the transaction is not described in paragraph (3)(A), the entity in question shall obtain the prior approval of the appropriate Federal banking agency.

"(5) Informing state supervisors.—The Secretary of the Treasury shall inform State bank supervisors of any determination under subsection (d)(1).

"(6) Effect on other law.—Nothing in this subsection shall be construed to relieve the entity in question from any otherwise applicable requirement of Federal law.

"(f) National Treatment Defined.—A foreign country accords national treatment to United States banks and bank holding companies if it offers them the same competitive opportunities (including effective market access) as are available to its domestic banks and bank holding companies.

"(g) Person of a Foreign Country Defined.—A person of a foreign country is a person that—

"(1) is organized under the laws of that country;

"(2) has its principal place of business in that country;

"(3) in the case of an individual—

"(A) is a citizen of that country, or

"(B) is domiciled in that country; or

"(4) is directly or indirectly controlled by a person described in paragraph (1), (2), or (3).

"(h) Exercise of Discretion.—In exercising discretion under this section—

"(1) the Secretary of the Treasury and the Federal banking agencies shall act in a manner consistent with the obligations of the United States under a bilateral or multilateral agreement governing financial services entered into by the President and approved and implemented by the Congress; and

"(2) the Federal banking agencies, in consultation with the Secretary of the Treasury—

"(A) shall consider, with respect to a bank, foreign bank, branch, agency, commercial lending company, or other affiliated entity that is a person of a foreign country and is already operating in the United States—

"(i) the extent to which that foreign country has a record of according national treatment to United States banks and bank holding companies; and

"(ii) whether that country would permit United States banks and bank holding companies already operating in that country to expand their activities in that country even if that country determined that the United States did not accord national treatment to that country's banks and bank holding companies; and

"(B) may further differentiate between entities already operating in the United States and entities that are not already operating in the United States, insofar as such differentiation is consistent with achieving the purpose of this section.".

SEC. 633. EFFECTUATING THE PRINCIPLE OF NATIONAL TREATMENT FOR SECURITIES BROKERS AND DEALERS.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following new section:

"SEC. 36. NATIONAL TREATMENT.

"(a) Purpose.—This section is intended to encourage foreign countries to accord national treatment to United States brokers and dealers that operate or seek to operate in those countries, and thereby end discrimination against United States brokers and dealers.

"(b) Reports Required.—

"(1) Contents of report.—The Secretary of the Treasury shall, not later than December 1, 1992, and biennially thereafter, submit to the Congress a report—

"(A) identifying any foreign country—

"(i) that does not accord national treatment to United States brokers and dealers—

"(I) according to the most recent report under section 3602 of the Omnibus Trade and Competitiveness Act of 1988; or

"(II) on the basis of more recent information that the Secretary deems appropriate indicating a failure to accord national treatment; and

"(ii) with respect to which no determination under subsection (d)(1) is in effect;

"(B) explaining why the Secretary has not made, or has rescinded, such a determination with respect to that country; and

"(C) describing the results of any negotiations conducted pursuant to subsection (c)(1) with respect to that country.

"(2) Submission of report.—

"(A) In general.—The report required by paragraph (1) may be submitted as part of a report submitted under section 3602 of the Omnibus Trade and Competition Act of 1988.

"(B) Most recent report defined.—If the report required by paragraph (1) is submitted as part of a report under such section 3602, that report under section 3602 shall be the 'most recent report' for purposes of paragraph (1)(A)(i)(I).

"(c) Negotiations Required.—

"(1) In general.—The Secretary of the Treasury shall initiate negotiations with any foreign country—

"(A) in which, according to the most recent report under section 3602 of the Omnibus Trade and Competitiveness Act of 1988, there is a significant failure to accord national treatment to United States brokers or dealers; and

"(B) with respect to which no determination under subsection (d)(1) is in effect,

to ensure that such country accords national treatment to United States brokers and dealers.

"(2) Negotiations not required.—Paragraph (1) does not require the Secretary of the Treasury to initiate negotiations with a foreign country if the Secretary—

"(A) determines that such negotiations would be fruitless or would impair national economic interests; and

"(B) gives written notice of that determination to the chairman and ranking minority member of the Committee on Banking, Housing, and Urban Affairs of the Senate and of the Committee on Energy and Commerce of the House of Representatives.

"(d) Discretionary Sanctions.—

"(1) Secretary's determination.—The Secretary of the Treasury may, at any time, publish in the Federal Register a determination that a foreign country does not accord national treatment to United States brokers or dealers.

"(2) Actions by commission.—If the Secretary of the Treasury has published in the Federal Register (and has not rescinded) a determination under paragraph (1) with respect to a foreign country, the Commission—

"(A) may include that determination and the conclusions of the reports under section 3602 of the Omnibus Trade and Competitiveness Act of 1988 and paragraph (1) of this subsection among the factors the Commission considers (i) in evaluating any application filed by a person of that foreign country, or (ii) in determining whether to prohibit an acquisition for which a notice is required under paragraph (3) by a person of that foreign country; and

"(B) may, in consultation with the Secretary, deny the application or prohibit the acquisition.

"(3) Notice required to acquire broker or dealer.—

"(A) In general.—If the Secretary of the Treasury has published in the Federal Register (and has not rescinded) a determination under paragraph (1) with respect to a foreign country, no person of that foreign country, acting directly or indirectly, shall acquire control of any registered broker or dealer unless—

"(i) the Commission has been given notice 60 days in advance of the acquisition, in such form as the Commission shall prescribe by rule and containing such information as the Commission requires by rule or order; and

"(ii) the Commission has not prohibited the acquisition.

"(B) Commission may extend 60-day period.—The Commission may, by order, extend the notice period during which an acquisition may be prohibited under subparagraph (A) for an additional 180 days.

"(C) Effective date.—The requirements of subparagraph (A) shall apply to any acquisition of control that is completed on or after the date on which the determination under paragraph (1) is published, irrespective of when the acquisition was initiated.

"(4) Review.—The Secretary of the Treasury may, at any time, and shall, annually, review any determination under paragraph (1) and decide whether that determination should be rescinded.

"(e) NATIONAL TREATMENT DEFINED.—A foreign country accords national treatment to United States brokers and dealers if it offers them the same competitive opportunities (including effective market access) as are available to its domestic brokers and dealers.

"(f) PERSONS OF A FOREIGN COUNTRY DEFINED.—A person of a foreign country is a person that—

"(1) is organized under the laws of that country;

"(2) has its principal place of business in that country;

"(3) in the case of an individual—

"(A) is a citizen of that country; or

"(B) is domiciled in that country; or

"(4) is directly or indirectly controlled by a person described in paragraph (1), (2), or (3).

"(g) EXERCISE OF DISCRETION.—In exercising discretion under this section—

"(1) the Secretary of the Treasury and the Commission shall act in a manner consistent with the obligations of the United States under a bilateral or multilateral agreement governing financial services entered into by the President and approved and implemented by the Congress; and

"(2) the Commission, in consultation with the Secretary of the Treasury—

"(A) shall consider, with respect to a broker or dealer that is a person of a foreign country and is already operating in the United States—

"(i) the extent to which that foreign country has a record of according national treatment to United States brokers and dealers; and

"(ii) whether that country would permit United States brokers or dealers already operating in that country to expand their activities in that country even if that country determined that the United States did not accord national treatment to that country's brokers or dealers; and

"(B) may further differentiate between entities already operating in the United States and entities that are not already operating in the United States, insofar as such differentiation is consistent with achieving the purpose of this section.".

SEC. 634. EFFECTUATING THE PRINCIPLE OF NATIONAL TREATMENT FOR INVESTMENT ADVISERS.

The Investment Advisers Act of 1940 (12 U.S.C. 80b-1 et seq.) is amended by adding at the end the following new section:

"SEC. 223. NATIONAL TREATMENT.

"(a) PURPOSE.—This section is intended to encourage foreign countries to accord national treatment to United States investment advisers that operate or seek to operate in those countries, and thereby end discrimination against United States investment advisers.

"(b) REPORTS REQUIRED.—

"(1) CONTENTS OF REPORT.—The Secretary of the Treasury shall, not later than December 1, 1992, and biennially thereafter, submit to the Congress a report—

"(A) identifying any foreign country—

"(i) that does not accord national treatment to United States investment advisers—

"(I) according to the most recent report under section 3602 of the Omnibus Trade and Competitiveness Act of 1988; or

"(II) on the basis of more recent information that the Secretary deems appropriate indicating a failure to accord national treatment; and

"(ii) with respect to which no determination under subsection (d)(1) is in effect;

"(B) explaining why the Secretary has not made, or has rescinded, such a determination with respect to that country; and

"(C) describing the results of any negotiations conducted pursuant to subsection (c)(1) with respect to that country.

"(2) SUBMISSION OF REPORT.—

"(A) IN GENERAL.—The report required by paragraph (1) may be submitted as part of a report submitted under section 3602 of the Omnibus Trade and Competition Act of 1988.

"(B) MOST RECENT REPORT DEFINED.—If the report required by paragraph (1) is submitted as part of a report under such section 3602, that report under section 3602 shall be the 'most recent report' for purposes of paragraph (1)(A)(i)(I).

"(c) NEGOTIATIONS REQUIRED.—

"(1) IN GENERAL.—The Secretary of the Treasury shall initiate negotiations with any foreign country—

"(A) in which, according to the most recent report under section 3602 of the Omnibus Trade and Competitiveness Act of 1988, there is a significant failure to accord national treatment to United States investment advisers; and

"(B) with respect to which no determination under subsection (d)(1) is in effect, to ensure that such country accords national treatment to United States investment advisers.

"(2) NEGOTIATIONS NOT REQUIRED.—Paragraph (1) does not require the Secretary of the Treasury to initiate negotiations with a foreign country if the Secretary—

"(A) determines that such negotiations would be fruitless or would impair national economic interests; and

"(B) gives written notice of that determination to the chairman and ranking minority member of the Committee on Banking, Housing, and Urban Affairs of the Senate and of the Committee on Energy and Commerce of the House of Representatives.

"(d) DISCRETIONARY SANCTIONS.—

"(1) SECRETARY'S DETERMINATION.—The Secretary of the Treasury may, at any time, publish in the Federal Register a determination that a foreign country does not accord national treatment to United States investment advisers.

"(2) Actions by commission.—If the Secretary of the Treasury has published in the Federal Register (and has not rescinded) a determination under paragraph (1) with respect to a foreign country, the Commission—

"(A) may include that determination and the conclusions of the reports under section 3602 of the Omnibus Trade and Competitiveness Act of 1988 and paragraph (1) of this subsection among the factors the Commission considers (i) in evaluating any application filed by a person of that foreign country, or (ii) in determining whether to prohibit an acquisition for which a notice is required under paragraph (3) by a person of that foreign country; and

"(B) may, in consultation with the Secretary, deny the application or prohibit the acquisition.

"(3) Notice required to acquire investment adviser.—

"(A) In general.—If the Secretary of the Treasury has published in the Federal Register (and has not rescinded) a determination under paragraph (1) with respect to a foreign country, no person of that foreign country, acting directly or indirectly, shall acquire control of any registered investment adviser unless—

"(i) the Commission has been given notice 60 days in advance of the acquisition, in such form as the Commission shall prescribe by rule and containing such information as the Commission requires by rule or order; and

"(ii) the Commission has not prohibited the acquisition.

"(B) Commission may extend 60-day period.—The Commission may, by order, extend the notice period during which an acquisition may be prohibited under subparagraph (A) for an additional 180 days.

"(C) Effective date.—The requirements of subparagraph (A) shall apply to any acquisition of control that is completed on or after the date on which the determination under paragraph (1) is published, irrespective of when the acquisition was initiated.

"(4) Review.—The Secretary of the Treasury may, at any time, and shall, annually, review any determination under paragraph (1) and decide whether that determination should be rescinded.

"(e) National Treatment Defined.—A foreign country accords national treatment to United States investment advisers if it offers them the same competitive opportunities (including effective market access) as are available to its domestic investment advisers.

"(f) Persons of a Foreign Country Defined.—A person of a foreign country is a person that—

"(1) is organized under the laws of that country;

"(2) has its principal place of business in that country;

"(3) in the case of an individual—

"(A) is a citizen of that country; or

"(B) is domiciled in that country; or

"(4) is directly or indirectly controlled by a person described in paragraph (1), (2), or (3).

"(g) Exercise of Discretion.—In exercising discretion under this section—

"(1) the Secretary of the Treasury and the Commission shall act in a manner consistent with the obligations of the United States under a bilateral or multilateral agreement governing financial services entered into by the President and approved and implemented by the Congress; and

"(2) the Commission, in consultation with the Secretary of the Treasury—

"(A) shall consider, with respect to an investment adviser that is a person of a foreign country and is already operating in the United States—

"(i) the extent to which that foreign country has a record of according national treatment to United States investment advisers; and

"(ii) whether that country would permit United States investment advisers already operating in that country to expand their activities in that country even if that country determined that the United States did not accord national treatment to that country's investment advisers; and

"(B) may further differentiate between entities already operating in the United States and entities that are not already operating in the United States, insofar as such differentiation is consistent with achieving the purpose of this section.".

SEC. 635. INVESTIGATION AND REPORT ON FINANCIAL INTERDEPENDENCE.

Subtitle G of title III of the Omnibus Trade and Competitiveness Act of 1988 (22 U.S.C. 5341 et seq.) is amended by adding at the end the following new section:

"SEC. 3605. INVESTIGATION AND REPORT ON FINANCIAL INTERDEPENDENCE.

"(a) Investigation Required.—The Secretary of the Treasury, in consultation and coordination with the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Board of Governors of the Federal Reserve System, the appropriate Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act), and any other appropriate Federal agency or department to be designated by the Secretary of the Treasury, shall conduct an investigation to determine the extent of the interdependence of the financial services sectors of the United States and foreign countries whose financial services institutions provide financial services in the United States, or whose persons have substantial ownership interests in United States financial services institutions, and the economic, strategic, and other consequences of that interdependence for the United States.

"(b) Report.—The Secretary of the Treasury shall transmit a report on the results of the investigation under subsection (a) within 2 years after the date of enactment of this section to the President, the Congress, the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, the appropriate Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act) and any other appropriate Federal agency or department as designated by the Secretary of the Treasury. The report shall—

"(1) describe the activities and estimate the scope of financial services activities conducted by United States financial services institutions in foreign markets (differentiated according to major foreign markets);

"(2) describe the activities and estimate the scope of financial services activities conducted by foreign financial services institutions in the United States (differentiated according to the most significant home countries or groups of home countries);

"(3) estimate the number of jobs created in the United States by financial services activities conducted by foreign financial services institutions and the number of jobs created in foreign countries by financial services activities conducted by United States financial services institutions;

"(4) estimate the additional jobs and revenues (both foreign and domestic) that would be created by the activities of United States financial services institutions in foreign countries if those countries offered such institutions the same competitive opportunities (including effective market access) as are available to those countries' domestic financial services institutions;

"(5) describe the extent to which foreign financial services institutions discriminate against United States persons in procurement, employment, providing credit or other financial services, or otherwise;

"(6) describe the extent to which foreign financial services institutions and other persons from foreign countries purchase or otherwise facilitate the marketing from the United States of government and private debt instruments and private equity instruments;

"(7) describe how the interdependence of the financial services sectors of the United States and foreign countries affects the autonomy and effectiveness of United States monetary policy;

"(8) describe the extent to which United States companies rely on financing by or through foreign financial services institutions, and the consequences of such reliance (including disclosure of proprietary information) for the industrial competitiveness and national security of the United States;

"(9) describe the extent to which foreign financial services institutions, in purchasing high technology products such as computers and telecommunications equipment, favor manufacturers from their home countries over United States manufacturers; and

"(10) contain other appropriate information relating to the results of the investigation under subsection (a).

"(c) Definitions.—As used in this section, the term 'financial services institution' means—

"(1) a broker, dealer, underwriter, clearing agency, transfer agent, or information processor with respect to securities, including government and municipal securities;

"(2) an investment company, investment manager, investment adviser, indenture trustee, or any depository institution, insurance company, or other organization operating as a fiduciary, trustee, underwriter, or other financial services provider;

"(3) any depository institution or depository institution holding company (as such terms are defined in section 3 of the Federal Deposit Insurance Act); and

"(4) any other entity providing financial services.".

SEC. 636. CONFORMING AMENDMENTS SPECIFYING THAT NATIONAL TREATMENT INCLUDES EFFECTIVE MARKET ACCESS.

(a) QUADRENNIAL REPORTS ON FOREIGN TREATMENT OF UNITED STATES FINANCIAL INSTITUTIONS.—Section 3602 of the Omnibus Trade and Competitiveness Act of 1988 (22 U.S.C. 5352) is amended—

(1) in paragraph (3), by striking "and securities companies" and inserting ", securities companies, and investment advisers"; and

(2) by adding at the end the following: "For purposes of this section, a foreign country denies national treatment to United States entities unless it offers them the same competitive opportunities (including effective market access) as are available to its domestic entities.".

(b) NEGOTIATIONS TO PROMOTE FAIR TRADE IN FINANCIAL SERVICES.—Section 3603(a)(1) of the Omnibus Trade and Competitiveness Act of 1988 (22 U.S.C. 5353(a)(1)) is amended by inserting "effective" after "banking organizations and securities companies have".

(c) PRIMARY DEALERS IN GOVERNMENT DEBT INSTRUMENTS.—Section 3502(b)(1) of the Omnibus Trade and Competitiveness Act of 1988 (22 U.S.C. 5342) is amended—

(1) by striking "does not accord to" and inserting "does not offer";

(2) by inserting "(including effective market access)" after "the same competitive opportunities in the underwriting and distribution of government debt instruments issued by such country"; and

(3) by striking "as such country accords to" and inserting "as are available to".

TITLE VII—BANK POWERS AND AFFILIATIONS

SEC. 701. SHORT TITLE.

This title may be cited as the "Proxmire Financial Modernization Act of 1991".

Subtitle A—Securities Activities

SEC. 711. ANTI-AFFILIATION PROVISION OF GLASS-STEAGALL ACT REPEALED.

(a) SECTION 20 REPEALED.—Section 20 (12 U.S.C. 377) of the Banking Act of 1933 is repealed.

(b) Conforming Amendment to Section 32.—Section 32 (12 U.S.C. 78) of the Banking Act of 1933 is amended by adding at the end the following sentence: "This section does not prohibit officers, directors, or employees of a securities affiliate (as defined in section 2 of the Bank Holding Company Act of 1956) from serving at the same time as officers, directors, or employees of a member bank affiliated with that securities affiliate under section 10 of the Bank Holding Company Act of 1956.".

SEC. 712. BANK HOLDING COMPANIES AUTHORIZED TO HAVE SECURITIES AFFILIATES.

Section 4(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)) is amended—

(1) by striking "or" at the end of paragraph (13);

(2) by striking the period at the end of paragraph (14) and inserting "; or"; and

(3) by adding after paragraph (14) the following new paragraph:

"(15) shares of a securities affiliate.".

SEC. 713. SECURITIES AFFILIATE DEFINED.

Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) is amended by adding at the end the following new subsection:

"(n) Securities Affiliate.—The term 'securities affiliate' means any company—

"(1) that—

"(A) is a subsidiary of a bank holding company;

"(B) is not an insured depository institution or a subsidiary of an insured depository institution;

"(C) engages in the United States in 1 or more of the activities described in paragraph (1) or (2) of section 10(a); and

"(D) is (or is required to be) registered under the Securities Exchange Act of 1934 as a broker or dealer, government securities broker or government securities dealer, or municipal securities dealer; and

"(2) the acquisition or retention of the shares or assets of which the Board has approved under section 10.".

SEC. 714. INSURED DEPOSITORY INSTITUTION DEFINED.

Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) is amended by adding at the end the following new subsection:

"(o) Insured Depository Institution.—The term insured depository institution has the meaning given to that term in section 3 of the Federal Deposit Insurance Act.".

SEC. 715. ESTABLISHMENT AND OPERATIONS OF SECURITIES AFFILIATES.

(a) In General.—Section 10 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended to read as follows:

"SEC. 10. SECURITIES ACTIVITIES.

"(a) Activities Permissible for Securities Affiliates.—A securities affiliate may do 1 or more of the following:

"(1) Engage in securities activities permissible for brokers or dealers registered under the Securities Exchange Act of 1934, including underwriting or dealing in securities of any type.

"(2) Engage in securities activities permissible for investment advisers registered under the Investment Advisers Act of 1940, including sponsoring, organizing, controlling, managing, and acting as investment adviser to an investment company.

"(3) Engage in, or acquire the shares of a company engaged in, any activity if—

"(A) a provision of section 4(c) permits bank holding companies generally to engage in that activity or acquire those shares; and—

"(B) either—

"(i) the Board permits the bank holding company to engage in that activity or acquire those shares through the securities affiliate; or

"(ii) that provision permits the bank holding company to engage in that activity or acquire those shares without the Board's approval.

"(b) Acquiring Interest in Securities Affiliate.—

"(1) Board's approval required.—A bank holding company shall not, without the Board's prior written approval, directly or indirectly acquire or retain—

"(A) shares of a securities affiliate; or

"(B) all or substantially all of the assets of a securities affiliate (or a company that would be a securities affiliate if the Board permitted the bank holding company to acquire that company).

"(2) Criteria for approval.—The Board shall not approve an application under paragraph (1) unless the Board, after notice and opportunity for hearing, determines that all of the following are satisfied:

"(A) Capital.—

"(i) Insured depository institutions.—Each of the bank holding company's subsidiary insured depository institutions is well capitalized.

"(ii) Bank holding company.—The bank holding company is (and immediately after the acquisition would continue to be) adequately capitalized.

"(B) Managerial resources.—

"(i) In general.—The bank holding company and each of its insured depository institution subsidiaries—

"(I) are well managed; and

"(II) were well managed during the preceding 12-month period (but for purposes of this subparagraph the Board may disregard any insured depository institution acquired by the bank holding company during that period).

"(ii) Securities activities.—The bank holding company has the managerial resources to conduct the proposed securities activities safely and soundly.

"(C) Internal controls.—The bank holding company has established adequate policies and procedures to manage financial and operational risks and to provide reasonable assurance of compliance with this section.

"(D) NO DETRIMENTAL EFFECT ON BANK HOLDING COMPANY OR ITS INSURED DEPOSITORY INSTITUTION SUBSIDIARIES.—The acquisition would not adversely affect the safety and soundness of—

"(i) the bank holding company; or

"(ii) any insured depository institution subsidiary of the bank holding company.

"(E) CONCENTRATION OF RESOURCES.—

"(i) IN GENERAL.—The acquisition would not result, directly or indirectly, in the affiliation of—

"(A) a bank holding company that has, or had on average during any of the 8 calendar quarters preceding the date of the application, total assets of more than $35,000,000,000, with

"(B) an investment banking organization that has, or had on average during any of the 8 calendar quarters preceding the date of the application, total assets of more than $15,000,000,000.

"(ii) INFLATION ADJUSTMENT.—The dollar limitations in clause (i) shall be adjusted annually after December 31, 1991, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.

"(F) PUBLIC BENEFIT.—The bank holding company's acquisition and operation of the securities affiliate can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices.

"(3) 91-DAY DEADLINE.—An application under this subsection shall be deemed to be approved if the Board fails to act on the application within the 91-day period beginning on the date on which the complete record of the application is submitted to the Board.

"(c) ADDITIONAL INVESTMENT IN SECURITIES AFFILIATE.—

"(1) PRIOR NOTICE REQUIRED.—A bank holding company that has acquired control of a securities affiliate under this section shall not, directly or indirectly, make any additional investment in the securities affiliate that is considered capital for purposes of any capital requirement imposed on the securities affiliate under the Securities Exchange Act of 1934 (other than an extension of credit under a revolving credit agreement approved by the Board), unless the bank holding company gives the Board prior written notice of the proposed investment and—

"(A) the Board issues a written statement of its intent not to disapprove the notice; or

"(B) the Board does not disapprove the notice within 30 days after the notice is filed.

"(2) 3-DAY RULE FOR CERTAIN BANK HOLDING COMPANIES.—If, after making any investment described in paragraph (1), the bank holding company would be adequately capitalized and each of the bank holding company's subsidiary insured depository institutions would be well capitalized, the bank holding company may make the investment if—

"(A) the Board issues a written statement of its intent not to disapprove the notice; or

"(B) the Board does not—

"(i) disapprove the notice within 3 business days after the notice is filed; or

"(ii) extend the period for considering the notice (not to exceed 30 days after the notice is filed).

"(3) CRITERIA FOR DISAPPROVING NOTICE.—The Board may disapprove a notice filed under paragraph (1) if any insured depository institution affiliate of the securities affiliate is undercapitalized, or if the Board determines that the bank holding company would be undercapitalized after making the investment or that the investment would otherwise be unsafe or unsound.

"(d) PROVISIONS APPLICABLE IF AFFILIATED INSURED DEPOSITORY INSTITUTION CEASES TO BE WELL CAPITALIZED.—

"(1) CERTAIN SECURITIES ACTIVITIES RESTRICTED UNLESS AFFILIATED INSTITUTIONS ARE WELL CAPITALIZED.—

"(A) APPLICABILITY.—This paragraph shall apply to a securities affiliate if any of the securities affiliate's insured depository institution affiliates is not well capitalized.

"(B) IN GENERAL.—Except as provided in subparagraph (C), the securities affiliate shall not, beginning 60 days after the insured depository institution ceased to be well capitalized, agree to underwrite any securities other than—

"(i) securities that subsection (b) or (c) of section 5136 of the Revised Statutes expressly authorizes a national bank to underwrite;

"(ii) securities backed by or representing interests in notes, drafts, acceptances, loans, leases, receivables, other obligations, or pools of any such obligations; or

"(iii) securities issued by an open-end investment company registered under the Investment Company Act of 1940.

"(C) EXCEPTION.—The Board may permit the securities affiliate to underwrite or deal in securities not described in clauses (i) through (iii) of subparagraph (B) for a period not exceeding 1 year from the date on which the affiliated insured depository institution ceased to be well capitalized, if—

"(i) the insured depository institution submits a capital restoration plan to the appropriate Federal banking agency specifying the steps the institution will take to become well capitalized and containing such other information as the agency may require; and

"(ii) the agency accepts the plan.

"(2) DIVESTITURE.—

"(A) IN GENERAL.—The bank holding company shall divest itself of the securities affiliate if any of the bank holding company's subsidiary insured depository institutions has been undercapitalized for more than 24 months.

"(B) EXTENDING TIME.—The Board may provide additional time for divestiture not exceeding 12 months if the appropriate Federal banking agency has accepted the undercapitalized institution's capital restoration plan under section 37(e) of the Federal Deposit Insurance Act, and the Board determines that—

"(i) the bank holding company has attempted in good faith to sell the securities affiliate at a realistic price; and

"(ii) the securities affiliate poses no significant risk to any affiliated insured depository institution.

"(e) SECURITIES AFFILIATE EXCLUDED IN DETERMINING WHETHER BANK HOLDING COMPANY IS ADEQUATELY CAPITALIZED.—

"(1) IN GENERAL.—In determining whether a bank holding company is adequately capitalized—

"(A) the bank holding company's capital and total assets shall each be reduced by—

"(i) an amount equal to the amount of the bank holding company's equity investment in any securities affiliate; and

"(ii) an amount equal to the amount of any extensions of credit by the bank holding company to any securities affiliate that are considered capital for purposes of any capital requirement imposed on the securities affiliate under section 15(c)(3) of the Securities Exchange Act of 1934; and

"(B) the securities affiliate's assets and liabilities shall not be consolidated with those of the bank holding company.

"(2) EXCEPTION FOR NONSECURITIES ACTIVITIES.—Paragraph (1) does not apply to the extent that the Board determines by order that an item described in that paragraph relates to activities that are not described in paragraph (1) or (2) of subsection (a).

"(f) SAFEGUARDS RELATING TO SECURITIES AFFILIATES.—

"(1) EXTENSIONS OF CREDIT AND ASSET PURCHASES RESTRICTED.—

"(A) IN GENERAL.—No insured depository institution affiliated with a securities affiliate shall, directly or indirectly, do any of the following:

"(i) Extend credit in any manner to the securities affiliate.

"(ii) Issue a guarantee, acceptance, or letter of credit, including an endorsement or a standby letter of credit, for the benefit of the securities affiliate.

"(iii) Purchase for its own account financial assets of the securities affiliate, except to the extent permitted by the Board with respect to purchasing at the current market value (based on reliable and continuously available price quotations)—

"(I) securities of the United States or its agencies or securities the payment of principal and interest on which are fully guaranteed by the United States or its agencies; or

"(II) securities that—

"(aa) the securities affiliate has been marking to market daily; and

"(bb) are rated investment grade by at least 1 nationally recognized statistical rating organization.

"(B) EXCEPTION FOR CLEARING SECURITIES.—Subparagraph (A)(i) does not prohibit an extension of credit by a well capitalized insured depository institution made to acquire or sell securities if—

"(i) the extension of credit is incidental to clearing transactions in those securities through that insured depository institution;

"(ii) both the principal of and the interest on the extension of credit are fully secured by those securities;

"(iii) either—

"(I) the extension of credit is to be repaid on the same calendar day; or

"(II) all of the following conditions are satisfied:

"(aa) the securities cannot, in the ordinary course of business, be cleared on that calendar day;

"(bb) the extension of credit is to be repaid before the close of business on the next calendar day; and

"(cc) extensions of credit under this subclause, when aggregated with all other covered transactions of the institution and all affiliated securities affiliates do not exceed 10 percent of the institution's capital stock and surplus; and

"(iv) either—

"(I) the securities are securities of the United States or its agencies, or on which the principal and interest are fully guaranteed by the United States or its agencies; or

"(II) to the extent that the Board permits transactions under this paragraph in securities not described in subclause (I), the securities affiliate provides the insured depository institution such additional security or other assurance of performance as the Board shall require to prevent such transactions from posing any appreciable risk to the institution.

"(C) OTHER EXCEPTIONS.—The Board may make exceptions to subparagraph (A) for well capitalized insured depository institutions if—

"(i) the transaction is fully secured in accordance with section 23A(c) of the Federal Reserve Act; and "(ii) the aggregate amount of covered transactions of the institution and all securities affiliates of the bank holding company, excluding transactions permitted under subparagraph (A)(iii)(I) or (B)(iii)(I), does not exceed 5 percent of the institution's capital stock and surplus.

"(2) CREDIT ENHANCEMENT RESTRICTED.—

"(A) IN GENERAL.—No insured depository institution affiliated with a securities affiliate shall, directly or indirectly, extend credit, or issue or enter into a standby letter of credit, asset purchase agreement, indemnity, guarantee, insurance, or other facility, for the purpose of enhancing the marketability of a securities issue underwritten by the securities affiliate.

"(B) EXCEPTIONS.—

"(i) IN GENERAL.—The Board may make exceptions to subparagraph (A) for well capitalized insured depository institutions if the amount of the extension of credit, standby letter of credit, asset purchase agreement, indemnity, guarantee, insurance, or other facility does not exceed the greater of—

"(I) 25 percent of the total amount of the facility; or

"(II) the amount of the facility provided by any 1 unaffiliated lender.

"(ii) LIMIT.—An insured depository institution shall not engage in any transaction that would be impermissible but for clause (i) if, after the transaction, the aggregate amount of all transactions permitted under clause (i) would exceed 40 percent of the institution's capital stock and surplus.

"(iii) SPECIAL RULE FOR ELIGIBLE SECURITIES.—In calculating compliance with the limit imposed by clause (ii), there shall be excluded one-half of the amount of any extension of credit, standby letter of credit, asset purchase agreement, indemnity, guarantee, insurance, or other facility with respect to securities that subsection (b) or (c) of section 5136 of the Revised Statutes expressly authorizes a national bank to underwrite or deal in.

"(3) PROHIBITION ON FINANCING PURCHASE OF SECURITY BEING UNDERWRITTEN.—

"(A) IN GENERAL.—No bank holding company or subsidiary of a bank holding company (other than a securities affiliate) shall knowingly extend or arrange for the extension of credit, directly or indirectly, secured by or for the purpose of purchasing any security while, or for 30 days after, that security is the subject of a distribution in which a securities affiliate of that bank holding company participates as an underwriter or a member of a selling group.

"(B) EXCEPTIONS.—The Board may make exceptions to subparagraph (A) for extensions of credit—

"(i) by the bank holding company or any subsidiary of the bank holding company, other than an insured depository institution or subsidiary of such an institution, if the bank holding company is adequately capitalized and each of the bank holding company's subsidiary insured depository institutions is well capitalized;

"(ii) by an insured depository institution or subsidiary of such an institution if—

"(I) the securities affiliate is not a principal underwriter or a principal member of a selling group; and

"(II) all of the bank holding company's securities affiliates in the aggregate have less than a 15 percent interest in the distribution;

"(iii) if subsection (b) or (c) of section 5136 of the Revised Statutes expressly authorizes a national bank to underwrite or deal in the securities; or

"(iv) if the extension of credit is secured by securities of a registered open-end investment company.

"(4) RESTRICTION ON EXTENDING CREDIT TO MAKE PAYMENTS ON SECURITIES.—

"(A) IN GENERAL.—No insured depository institution affiliated with a securities affiliate shall, directly or indirectly, extend credit to an issuer of securities underwritten by the securities affiliate for the purpose of paying the principal of those securities or interest or dividends on those securities. This subparagraph does not apply to an extension of credit for a documented purpose (other than paying principal, interest, or dividends) if the timing, maturity, and other terms of the credit, taken as a whole, are substantially different from those of the underwritten securities.

"(B) EXCEPTIONS.—The Board may make exceptions to subparagraph (A) if the insured depository institution is well capitalized, and—

"(i) subsection (b) or (c) of section 5136 of the Revised Statutes expressly authorizes a national bank to underwrite and deal in those securities; or

"(ii) the amount of credit extended by the institution does not exceed the greater of—

"(I) 25 percent of the total extension of credit; or

"(II) the amount of credit extended by any 1 unaffiliated lender.

"(5) DIRECTOR AND SENIOR EXECUTIVE OFFICER INTERLOCKS RESTRICTED.—

"(A) IN GENERAL.—No director or senior executive officer of a securities affiliate shall serve at the same time as a director or senior executive officer of any affiliated insured depository institution.

"(B) EXCEPTION FOR SMALL BANK HOLDING COMPANIES.—Notwithstanding subparagraph (A), a director or senior executive officer of a securities affiliate may serve at the same time as a director or senior executive officer of an affiliated insured depository institution if that institution and all affiliated insured depository institutions have, in the aggregate, total assets of not more than $500,000,000. The dollar limitation in the preceding sentence shall be adjusted annually after December 31, 1991, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.

"(C) BOARD'S AUTHORITY TO MAKE EXCEPTIONS.—

"(i) IN GENERAL.—The Board may, by regulation or order, make exceptions to subparagraph (A).

"(ii) STANDARDS.—The Board—

"(I) shall, in determining whether to make such exceptions, consider the size of the bank holding companies, insured depository institutions, and securities affiliates involved, any burdens that may be imposed by subparagraph (A), the safety and soundness of the insured depository institutions and securities affiliates, and other appropriate factors, including unfair competition in securities activities or the improper exchange of nonpublic customer information; and

"(II) shall not permit—

"(aa) more than half of the insured depository institution's directors to be directors or senior executive officers of the securities affiliate; or

"(bb) more than half of the securities affiliate's directors to be directors or senior executive officers of the insured depository institution.

"(D) SENIOR EXECUTIVE OFFICER DEFINED.—For purposes of this paragraph, the term 'senior executive officer' has the same meaning as the term 'executive officer' has in section 22(h) of the Federal Reserve Act.

"(6) DISCLOSURE REQUIRED.—Pursuant to regulations issued by the Securities and Exchange Commission, a securities affiliate shall conspicuously disclose in writing to each of its customers that securities sold, offered, or recommended by the securities affiliate are not deposits, are not insured by the Federal Deposit Insurance Corporation, are not guaranteed by an affiliated insured depository institution, and are not otherwise an obligation of an insured depository institution (unless such is the case).

"(7) INVESTMENT ADVICE RESTRICTED.—No insured depository institution subsidiary of a bank holding company shall express any opinion on the value of, or the advisability of purchasing or selling, securities underwritten or dealt in by a securities affiliate of that bank holding company unless the insured depository institution discloses to the customer that the securities affiliate is underwriting or dealing in the securities.

"(8) IMPROPER DISCLOSURE OF CONFIDENTIAL CUSTOMER INFORMATION PROHIBITED.—

"(A) IN GENERAL.—No insured depository institution subsidiary of a bank holding company shall disclose to a securities affiliate of that bank holding company, nor shall a securities affiliate disclose to any affiliated insured depository institution or subsidiary of such an institution, any nonpublic customer information (including an evaluation of the creditworthiness of an issuer or other customer of that institution or securities affiliate) without that customer's consent.

"(B) Definition.—For purposes of subparagraph (A), the term 'nonpublic customer information' does not include—

"(i) customers' names and addresses (unless a customer has specified otherwise);

"(ii) information that could be obtained from unaffiliated credit bureaus or similar companies in the ordinary course of business; or

"(iii) information that is customarily provided to unaffiliated credit bureaus or similar companies in the ordinary course of business by—

"(I) insured depository institutions not affiliated with securities affiliates; or

"(II) brokers and dealers not affiliated with insured depository institutions.

"(9) Underwriting securities representing obligations originated by affiliate restricted.—A securities affiliate shall not underwrite securities secured by or representing an interest in mortgages or other obligations originated or purchased by an affiliated insured depository institution or subsidiary of such an institution—

"(A) unless those securities—

"(i) are rated by at least 1 unaffiliated, nationally recognized statistical rating organization;

"(ii) are issued or guaranteed by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the Government National Mortgage Association; or

"(iii) represent interests in securities described in clause (ii); or

"(B) except as permitted by the Board.

"(10) Reciprocal arrangements prohibited.—No bank holding company and no subsidiary of a bank holding company may enter into any agreement, understanding, or other arrangement under which—

"(A) one bank holding company (or subsidiary of that bank holding company) agrees to engage in a transaction with, or on behalf of, another bank holding company (or subsidiary of that bank holding company), in exchange for

"(B) the agreement of the second bank holding company referred to in subparagraph (A) (or a subsidiary of that bank holding company) to engage in any transaction with, or on behalf of, the first bank holding company referred to in that subparagraph (or any subsidiary of that bank holding company),

for the purpose of evading any requirement or restriction of Federal law on transactions between, or for the benefit of, affiliates of bank holding companies.

"(11) SAFEGUARDS APPLY TO CERTAIN SUBSIDIARIES.—Except as provided in this subsection:

"(A) SECURITIES AFFILIATE.—No subsidiary of a securities affiliate may do anything that this subsection prohibits the securities affiliate from doing.

"(B) INSURED DEPOSITORY INSTITUTION.—No subsidiary of an insured depository institution may do anything that this subsection prohibits the insured depository institution from doing. Except as otherwise provided by the Board, this subparagraph shall not apply to a subsidiary that engages in securities activities only outside the United States.

"(12) ADDITIONAL RESTRICTIONS.—The Board shall, by regulation or order, prescribe such additional restrictions and requirements as may be necessary or appropriate to avoid any significant risk to insured depository institutions, protect customers, prevent insured depository institutions from subsidizing securities affiliates, and avoid conflicts of interest or other abuses.

"(13) EXCEPTIONS.—In exercising any authority to make exceptions granted by another provision of this subsection (other than paragraph (5)), the Board shall—

"(A) act by regulation or order;

"(B) act only after notice and opportunity for comment; and

"(C) avoid any significant risk to insured depository institutions, protect customers, prevent insured depository institutions from subsidizing securities affiliates, and avoid conflicts of interest or other abuses.

"(14) APPLICATION TO ALL INSURED DEPOSITORY INSTITUTIONS.—If any insured depository institution is an affiliate of any company engaged in underwriting or dealing in any security (except to the extent that subsection (b) or (c) of section 5136 of the Revised Statutes expressly authorizes a national bank to underwrite or deal in that security), this subsection shall apply in the same manner and to the same extent as if—

"(A) that company were a securities affiliate; and

"(B) any company having control of the insured depository institution were a bank holding company.

"(15) COMPLIANCE PROGRAMS REQUIRED.—Each appropriate Federal banking agency and the Securities and Exchange Commission shall establish a program for—

"(A) enforcing compliance with this subsection by entities under its supervision; and

"(B) responding to any complaints from customers about inappropriate cross-marketing of securities products or inadequate disclosure.

"(g) ACTIVITIES NOT PERMISSIBLE FOR AFFILIATED DEPOSITORY INSTITUTIONS.—A bank holding company that acquires control of a securities affiliate shall not, beginning 1 year after the date of that acquisition, permit any insured depository institution of which it has control or any subsidiary of that institution to engage, directly or indirectly, in the United States—

"(1) in underwriting securities backed by or representing interests in notes, drafts, acceptances, loans, leases, receivables, other obligations, or pools of any such obligations, originated or purchased by the insured depository institution or its affiliates; or

"(2) in underwriting or dealing in any other securities, except to the extent that subsection (b) or (c) of section 5136 of the Revised Statutes expressly authorizes a national bank to underwrite or deal in those securities.

"(h) APPROVAL OF SECURITIES ACTIVITIES UNDER SECTION 4(c)(8) RESTRICTED.—The Board shall deny any application by a bank holding company under any provision of section 4(c) other than paragraph (13), to engage in, or acquire the shares of a company engaged in, underwriting or dealing in securities, unless subsection (b) or (c) of section 5136 of the Revised Statutes expressly authorizes a national bank to underwrite or deal in those securities.

"(i) BANKERS' BANKS.—For purposes of this section, each shareholder of or participant in a company that controls a depository institution described in section 5169(b)(1) of the Revised Statutes or in a similar statute of any State, and each subsidiary of such a shareholder or participant, shall be treated as if it were a subsidiary of that company. This subsection shall not apply to a shareholder or participant in that company (or subsidiary of that shareholder or participant) if the shareholder or participant and its affiliates do not, in the aggregate, control more than 5 percent of any class of voting shares of that company.

"(j) NO LIMITATION ON OTHER AUTHORITY OR DUTIES.—Nothing in this section limits—

"(1) any authority of an appropriate Federal banking agency or the Securities and Exchange Commission to impose more stringent restrictions or requirements; or

"(2) any disclosure or registration requirements under the securities laws, as defined in section 3(a)(47) of the Securities Exchange Act of 1934.

"(k) DEFINITIONS.—For purposes of this section:

"(1) CAPITAL CATEGORIES.—

"(A) INSURED DEPOSITORY INSTITUTIONS.—With respect to insured depository institutions, the terms 'well capitalized', 'adequately capitalized', and 'undercapitalized' have the meaning given to those terms in section 37(b) of the Federal Deposit Insurance Act.

"(B) BANK HOLDING COMPANIES.—A bank holding company is 'adequately capitalized' if it meets the required minimum level for each relevant capital measure established by the Board for bank holding companies, and 'undercapitalized' if it fails to meet the required minimum level for any such relevant capital measure.

"(2) CAPITAL STOCK AND SURPLUS.—The term 'capital stock and surplus' has the same meaning as in section 23A of the Federal Reserve Act.".

"(3) COVERED TRANSACTION.—The term 'covered transaction' has the same meaning as in section 23A(b)(7) of the Federal Reserve Act, without regard to any exemption under subsection (e).

"(4) **Dealing**.—The terms 'dealing' and 'deal in' mean acting as a 'dealer' as defined in section 3(a)(5) of the Securities Exchange Act of 1934, but does not include purchasing or selling securities solely for the account of another person.

"(5) **Equity securities**.—The term 'equity securities' does not include mortgage-related securities.

"(6) **Foreign banks**.—A branch or agency of a foreign bank or a commercial lending company controlled by a foreign bank (as the terms 'agency', 'branch', 'commercial lending company', and 'foreign bank' are defined in section 1 of the International Banking Act of 1978), shall be deemed to be a bank.

"(7) **Security**.—

"(A) **In general**.—Except as provided in subparagraph (B) or (C), the term 'security' has the meaning given to that term in section 3(a)(10) of the Securities Exchange Act of 1934.

"(B) **Exceptions**.—The term 'security' does not include any of the following:

"(i) A contract of insurance.

"(ii) A deposit account, savings account, certificate of deposit, or other deposit instrument issued by a depository institution.

"(iii) A share account issued by a savings association if the account is insured by the Federal Deposit Insurance Corporation.

"(iv) A banker's acceptance.

"(v) A letter of credit issued by a depository institution.

"(vi) A debit account at a depository institution arising from a credit card or similar arrangement.

"(C) **Board's authority to exempt traditional banking products**.—The Board may by regulation exempt from the definition of 'security' a banking product that national banks have traditionally and customarily originated or handled (such as loan participations or mortgage notes) if the exemption is consistent with the purposes of this section.

"(8) **Underwriting**.—The term 'underwriting' means acting as an 'underwriter' as defined in section 2(11) of the Securities Act of 1933, but does not include effecting sales—

"(A) as part of a primary offering of securities by an issuer, not involving a public offering, under section 3(b), 4(2), or 4(6) of the Securities Act of 1933 and the Securities and Exchange Commission's regulations under that Act; and

"(B) exclusively to accredited investors as defined in section 2 of the Securities Act of 1933 and the Commission's regulations under that Act.

(b) **Transition Rule Regarding Exemptions to Section 10(f)**.—The Board may make exceptions to the following provisions of section 10(f) of the Bank Holding Company Act of 1956 (as amended by subsection (a)) only as follows:

(1) Under subsection (f)(1)(A)(iii)(II) (relating to purchasing certain securities from a securities affiliate for an insured de-

pository institution's own account), beginning 1 year after the date of enactment of this Act.

(2) Under subsection (f)(1)(B)(iii)(II) (relating to extending credit overnight to clear securities), beginning 3 years after that date of enactment.

(3) Under subsection (f)(2)(B) (relating to credit enhancement for securities underwritten by the securities affiliate), beginning 1 year after that date of enactment.

(4) Under subsection (f)(3)(B) (relating to financing the purchase of securities being underwritten by the securities affiliate), beginning 1 year after that date of enactment.

(5) Under subsection (f)(9)(B) (relating to underwriting securities secured by or representing an interest in certain obligations originated by affiliated insured depository institutions), beginning 1 year after that date of enactment.

(c) TRANSITION RULE FOR SECURITIES AFFILIATES APPROVED UNDER SECTION 4(c)(8).—

(1) IN GENERAL.—Effective 18 months after the date of enactment of this Act, no bank holding company may engage in, or retain the shares of any company engaged in, underwriting or dealing in securities based on the approval of an application under section 4(c)(8) of the Bank Holding Company Act of 1956—

(A) unless the bank holding company has obtained the Board's approval to retain the shares of that company under section 10; or

(B) except to the extent that subsection (b) or (c) of section 5136 of the Revised Statutes (12 U.S.C. 24) expressly authorizes a national bank to underwrite or deal in those securities.

(2) EXTENDING TIME.—

(A) IN GENERAL.—The Board may, for good cause shown, extend the time provided under paragraph (1) for not more than 18 months.

(B) PENDING APPLICATIONS.—If a bank holding company has filed an application under section 10(b) of the Bank Holding Company Act of 1956 not later than 180 days after the date of enactment of this Act, paragraph (1) shall not apply with respect to the company engaged in such underwriting or dealing until 180 days after the Board has acted on the application.

(d) CONFORMING AMENDMENT REGARDING CONDITIONAL APPROVAL OF APPLICATIONS.—Section 4(a)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(a)(2)) is amended by striking "paragraph (8)" and all that follows through "issued by the Board under such paragraph" and inserting "section 10 or subsection (c)(8), subject to all the conditions specified in those provisions or in any order or regulation issued by the Board under those provisions".

(e) AMENDMENT TO THE FEDERAL RESERVE ACT.—Section 23B(b)(1)(B) of the Federal Reserve Act (12 U.S.C. 371c-1(b)(1)(B)) is amended by inserting "and for 30 days thereafter" after "during the existence of any underwriting or selling syndicate".

(f) EXEMPTION FROM SECTION 305(b) OF THE FEDERAL POWER ACT.—Section 305(b) of the Federal Power Act (16 U.S.C. 825d(b)) shall not apply to any person now holding or proposing to hold the position of officer or director of a public utility and officer or director of a bank, trust company, banking association, or firm permitted by section 10 of the Bank Holding Company Act of 1956 (as amended by subsection (a)) or section 5136(b) of the Revised Statutes (12 U.S.C. 24(b)) (as amended by section 716) to underwrite or participate in the marketing of securities (including commercial paper) of a public utility, if that bank, trust company, banking association, or firm does not underwrite or participate in the marketing of securities of the public utility for which the person serves or proposes to serve as an officer or director.

SEC. 716. BANK SECURITIES AND INVESTMENT ACTIVITIES.

(a) RESTATEMENT AND REORGANIZATION OF SECTION 5136 OF THE REVISED STATUTES.—

(1) IN GENERAL.—Section 5136 of the Revised Statutes (12 U.S.C. 24) is amended to read as follows:

"SEC. 5136. CORPORATE POWERS OF NATIONAL BANKS.

"(a) GENERAL POWERS.—Upon filing articles of association and an organization certificate, a national bank shall become, as of the date of the execution of the organization certificate, a corporation which shall have, in the name designated in that certificate, the following powers:

"(1) CORPORATE SEAL.—To adopt and use a corporate seal.

"(2) SUCCESSION.—To have succession from February 25, 1927, or from the date of the execution of the organization certificate (if that date is later than February 25, 1927) until—

"(A) such time as the bank is dissolved by an act of shareholders owning not less than ⅔ of the stock of such bank;

"(B) the franchise is forfeited—

"(i) by reason of violation of law; or

"(ii) by a general or special Act of Congress; or

"(C) the bank's affairs are placed in the control of the Federal Deposit Insurance Corporation, as receiver, and finally wound up by that Corporation.

"(3) CONTRACTS.—To enter into contracts.

"(4) LITIGATION.—To sue and be sued in its corporate capacity, and to complain and defend in any action brought by or against the national bank in any court of competent jurisdiction.

"(5) OFFICERS.—To elect or appoint directors to the bank's board of directors and, by that board of directors, to—

"(A) appoint a president, vice president, cashier, and other officers;

"(B) define the duties of officers;

"(C) require bonds of those officers and fix the penalty of those bonds; and

"(D) dismiss any officer at the pleasure of the directors and appoint another to fill the position.

"(6) BYLAWS.—To prescribe, by the board of directors, bylaws not inconsistent with law regulating the manner in which—

"(A) stock of the bank may be transferred;

"(B) the directors of the bank are appointed or elected;

"(C) the officers of the bank may be appointed;

"(D) the property of the bank may be transferred;

"(E) the general business of the bank may be conducted; and

"(F) the privileges granted to the bank by law may be exercised and enjoyed.

"(7) Banking powers.—To exercise, by the board of directors or officers or agents authorized by that board and subject to any other provision of law, all such incidental powers as shall be necessary to carry on the business of banking, including the following:

"(A) Discounting and negotiating promissory notes, drafts, bills of exchange, and other evidence of debt.

"(B) Receiving deposits.

"(C) Buying and selling exchange, coin, and bullion.

"(D) Loaning money on personal security.

"(E) Obtaining, issuing, and circulating notes according to the provisions of this title.

"(8) Contributions.—To contribute to community funds or charitable, philanthropic, or benevolent instrumentalities conducive to the public welfare, such sums as the board of directors may determine to be expedient and in the interests of the national bank if that bank is located in a State the laws of which do not expressly prohibit State banking institutions from contributing to such funds or instrumentalities.

"(9) Investment in tangible personal property.—To invest in tangible personal property, including, without limitation, vehicles, manufactured homes, machinery, equipment, or furniture, for lease financing transactions on a net lease basis. The investment may not exceed 10 percent of the national bank's assets.

"(b) Banking Powers Related to Securities Activities and Commercial Paper.—

"(1) Securities underwriting prohibited.—Except as otherwise provided in this subsection or any other provision of law, no national bank may underwrite any issue of securities.

"(2) Buying and selling securities as agent for customer.—Except as otherwise provided in this section or any other provision of law, no national bank may purchase or sell any security unless the purchase or sale is made—

"(A) for the account of a customer;

"(B) by the bank—

"(i) upon the order of the customer; or

"(ii) in the bank's capacity as trustee, executor, administrator, custodian, managing agent, or guardian of estates with respect to the account of the customer; and

"(C) without recourse.

"(3) Exceptions.—

"(A) Bank securities and bank investments for the bank's own account.—Paragraph (2) shall not apply to the purchase or sale by a national bank of—

"(i) any security of which the national bank is the issuer; or "(ii) any investment security or other security which the bank is purchasing or has purchased in accordance with subsection (c).

"(B) ISSUANCE AND SALE OF CERTAIN GNMA GUARANTEED SECURITIES.—Notwithstanding paragraph (2) or any other provision of this section, a national bank may issue and sell securities that are guaranteed by the Government National Mortgage Association under section 306(g) of the National Housing Act.

"(C) BANK-ELIGIBLE SECURITIES.—Paragraphs (1) and (2) shall not apply with respect to any bank-eligible security, subject to the limitations contained in subsection (c)(3)(B).

"(c) BANKING POWERS RELATED TO PURCHASING INVESTMENT SECURITIES FOR THE BANK'S OWN ACCOUNT.—

"(1) LIMITED AUTHORITY TO BUY FOR BANK'S OWN ACCOUNT FOR INVESTMENT.—Except as provided in paragraphs (2) through (10), a national bank's authority to purchase investment securities or other securities for the bank's own account under this section shall be subject to the following limitations:

"(A) CORPORATE STOCK.—Except as hereinafter provided or otherwise permitted by law, nothing herein contained shall authorize the purchase by the association for its own account of any shares of stock of any corporation.

"(B) MAXIMUM INVESTMENT AMOUNT FOR SECURITIES ISSUED BY ANY SINGLE ISSUER.—The total amount of investment securities held by the bank (for the bank's own account) which were issued by any 1 person, or for which such person is the obligor, may not exceed at any time the amount which is equal to the sum of—

"(i) 10 percent of the capital stock of the bank which is actually paid in and unimpaired; and

"(ii) 10 percent of the bank's unimpaired surplus fund,

except that this subparagraph shall not require any bank to dispose of investment securities lawfully held by the bank on August 23, 1935.

"(2) BANKERS' BANKS.—

"(A) ACQUISITION OF SHARES ALLOWED.—Notwithstanding paragraph (1), a national bank may purchase for the bank's own account shares of an insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act) or a bank holding company (as defined in section 2(a) of the Bank Holding Company Act of 1956), if—

"(i) the outstanding shares of the bank or company are owned exclusively (except to the extent of directors' qualifying shares required by law) by depository institutions (as defined in clauses (i) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act) or depository institution holding companies; and

"(ii) the bank or company, and all subsidiaries of the bank or company, are engaged exclusively in providing services for other depository institutions and officers, directors, and employees of those depository institutions.

"(B) MAXIMUM INVESTMENT AMOUNT.—The total amount of stock held by any national bank in any bank or holding company referred to in subparagraph (A)—

"(i) may not exceed, at any time, the sum of—

"(I) 10 percent of the national bank's capital stock; and

"(II) 10 percent of the national bank's paid in and unimpaired surplus fund; and

"(ii) may not include more than 5 percent of any class of voting securities of that bank or company.

"(3) BANK-ELIGIBLE SECURITIES.—

"(A) IN GENERAL.—Notwithstanding paragraph (1), a national bank may purchase or sell bank-eligible securities for the bank's own account.

"(B) MAXIMUM INVESTMENT AMOUNT IN THE CASE OF CERTAIN SECURITIES.—The total amount of bank-eligible securities described in subparagraph (N), (O), (P), or (Q) of subsection (d)(2) that may be held by a national bank at any time—

"(i) in connection with being an underwriter of those securities or buying and selling, as principal, those securities under subsection (b); or

"(ii) for the bank's own account,

shall not exceed an amount equal to the sum of 10 percent of the capital stock of the national bank actually paid in and unimpaired and 10 percent of the bank's unimpaired surplus fund.

"(C) SPECIAL RULE FOR CERTAIN COMMITMENTS.—For purposes of subparagraph (B), any bank-eligible securities referred to in that subparagraph as to which any national bank is under a commitment shall be deemed to be held by the national bank.

"(4) MORTGAGE RELATED SECURITIES.—

"(A) IN GENERAL.—Notwithstanding paragraph (1), a national bank may purchase for the bank's own account—

"(i) securities offered and sold pursuant to section 4(5) of the Securities Act of 1933; or

"(ii) mortgage related securities (as defined in section 3(a)(41) of the Securities Exchange Act of 1934).

"(B) REGULATIONS.—Any purchase by a national bank of securities under subparagraph (A) shall be subject to such limitations and restrictions as the Comptroller of the Currency may prescribe by regulation, including regulations concerning—

"(i) the minimum size of the issue (at the time of initial distribution) with respect to any such security; and

"(ii) a minimum aggregate sales price with respect to any such security.

"(5) SAFE-DEPOSIT BUSINESS.—

"(A) ACQUISITION OF SHARES ALLOWED.—Notwithstanding paragraph (1), a national bank may, in connection with the bank's carrying on the business commonly known as the 'safe-deposit business', purchase the capital stock of a corporation organized under the law of any State to conduct a safe-deposit business.

"(B) MAXIMUM INVESTMENT AMOUNT.—The total amount of stock held by any national bank in any corporation referred to in subparagraph (A) shall not exceed an amount equal to the sum of—

"(i) 15 percent of the capital stock of the national bank actually paid in and unimpaired; and

"(ii) 15 percent of the bank's unimpaired surplus fund.

"(6) NATIONAL HOUSING CORPORATIONS.—Notwithstanding paragraph (1), a national bank may—

"(A) purchase for the bank's own account shares of stock issued by a corporation authorized to be created pursuant to title IX of the Housing and Urban Development Act of 1968; and

"(B) invest in a partnership, limited partnership, or joint venture formed pursuant to section 907(a) or 907(c) of that Act.

"(7) STATE HOUSING CORPORATIONS.—

"(A) ACQUISITION OF SHARES AND OTHER INVESTMENTS ALLOWED.—Notwithstanding paragraph (1), a national bank may—

"(i) purchase for the bank's own account shares of stock issued by any State housing corporation incorporated in the State in which the national bank is located; and

"(ii) invest in loans and commitments for loans to any such corporation.

"(B) MAXIMUM INVESTMENT AMOUNT.—The total amount of stock held by a national bank in any corporation referred to in subparagraph (A) and the amount of investments in loans and commitments for loans to such corporation by the bank shall not exceed an amount equal to the sum of—

"(i) 5 percent of the national bank's capital stock actually paid in and unimpaired; and

"(ii) 5 percent of the bank's unimpaired surplus fund.

"(8) AGRICULTURAL CREDIT CORPORATIONS.—

"(A) ACQUISITION OF SHARES AND OTHER INVESTMENTS ALLOWED.—Notwithstanding paragraph (1), a national bank may purchase for the bank's own account shares of stock issued by a corporation organized solely for the purpose of making loans to farmers and ranchers for agricultural purposes, including breeding, raising, fattening, or marketing livestock.

"(B) MAXIMUM INVESTMENT AMOUNT.—Unless the national bank owns at least 80 percent of the stock of an agricultural credit corporation described in subparagraph (A), the total amount of stock held by the national bank in any such corporation shall not exceed an amount equal to 20 percent of the unimpaired capital and surplus of the national bank.

"(9) QUALIFIED CANADIAN GOVERNMENT OBLIGATIONS.—

"(A) IN GENERAL.—A national bank may deal in, underwrite, and purchase for its own account qualified Canadian Government obligations, to the same extent that it may deal in, underwrite, and purchase for its own account obligations of the United States or general obligations of any State or of any political subdivision thereof.

"(B) DEFINITIONS.—

"(i) QUALIFIED CANADIAN GOVERNMENT OBLIGATIONS.—For purposes of this paragraph, the term 'qualified Canadian Government obligations' means any debt obligation which is backed by Canada, any Province of Canada, or any political subdivision of any such Province to a degree which is comparable to the liability of the United States, any State, or any political subdivision thereof for any obligation which is backed by the full faith and credit of the United States, the State, or the political subdivision. The term includes any debt obligation of any agent of Canada or any such Province or any political subdivision of such Province if—

"(I) the obligation of the agent is assumed in the agent's capacity as agent for Canada or the Province or the political subdivision; and

"(II) Canada, the Province, or the political subdivision on whose behalf the agent is acting with respect to the obligation is ultimately and unconditionally liable for the obligation.

"(ii) PROVINCE OF CANADA.—For purposes of this paragraph, the term 'Province of Canada' means a Province of Canada and includes the Yukon Territory and the Northwest Territories and their successors.

"(10) ADDITIONAL LIMITATIONS PRESCRIBED IN REGULATIONS.—The authority of a national bank under this section to purchase investment securities for the bank's own account shall be subject to such additional limitations and restrictions as the Comptroller of the Currency may prescribe by regulation.

"(d) DEFINITIONS.—

"(1) INVESTMENT SECURITIES.—For purposes of this section, the term 'investment securities' means marketable obligations, evidencing indebtedness of any person, copartnership, association, or corporation in the form of bonds, notes, and/or debentures commonly known as investment securities under such further definition of the term 'investment securities' as may by regulation be prescribed by the Comptroller of the Currency.

"(2) BANK ELIGIBLE SECURITY.—For purposes of this section, the term 'bank-eligible security' means any of the following investment securities:

"(A) Obligations of the United States.

"(B) General obligations of any State or any political subdivision of any State.

"(C) Obligations of the Washington Metropolitan Area Transit Authority which are guaranteed by the Secretary of Transportation under section 9 of the National Capital Transportation Act of 1969.

"(D) Obligations issued—

"(i) under authority of the Federal Farm Loan Act; or

"(ii) by the thirteen banks for cooperatives, any bank for cooperatives, or the Federal Home Loan Banks.

"(E) Obligations insured by the Secretary of Housing and Urban Development under title XI of the National Housing Act.

"(F) Obligations insured by the Secretary of Housing and Urban Development pursuant to section 207 of the National Housing Act, if the debentures to be issued in payment of those insured obligations are guaranteed as to principal and interest by the United States.

"(G) Obligations, participations, or other instruments of or issued by the Federal National Mortgage Association or the Government National Mortgage Association.

"(H) Mortgages, obligations, or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or section 306 of the Federal Home Loan Mortgage Corporation Act.

"(I) Obligations of the Federal Financing Bank.

"(J) Obligations of the Environmental Financing Authority.

"(K) Obligations or other instruments or securities of the Student Loan Marketing Association.

"(L) Such obligations of any local public agency (as defined in section 110(h) of the Housing Act of 1949) as are secured by an agreement between the local public agency and the Secretary of Housing and Urban Development in which the local public agency agrees to borrow from the Secretary, and the Secretary agrees to lend to that local public agency, moneys in an aggregate amount which (together with any other moneys irrevocably committed to the payment of interest on those obligations) will suffice to pay, when due, the interest on and all installments (including the final installment) of the principal of those obligations, which moneys under the terms of the agreement are required to be used for those payments.

"(M) Such obligations of a public housing agency (as defined in the United States Housing Act of 1937) as are secured—

"(i) by an agreement between that agency and the Secretary of Housing and Urban Development in which the agency agrees to borrow from the Secretary, and the Secretary agrees to lend to the agency, prior to the maturity of those obligations, moneys in an amount which (together with any other moneys irrevocably committed to the payment of interest on those obligations) will suffice to pay the principal of those obligations with interest to maturity thereon, which moneys under the terms of that agreement are required to be used for the purpose of paying the principal of and the interest on those obligations at their maturity;

"(ii) by a pledge of annual contributions under an annual contributions contract between that agency and the Secretary of Housing and Urban Development if that contract contains the covenant by the Secretary which is authorized by section 6(g) of the United States Housing Act of 1937, and if the maximum sum and the maximum period specified in that contract pursuant to such section 6(g), shall not be less than the annual amount and the period for payment which are requisite to provide for the payment when due of all installments of principal and interest on those obligations; or

"(iii) by a pledge of both annual contributions under an annual contributions contract containing the covenant by the Secretary of Housing and Urban Development which is authorized by section 6(g) of the United States Housing Act of 1937, and a loan under an agreement between that agency and the Secretary in which the agency agrees to borrow from the Secretary and the Secretary agrees to lend to the agency, prior to the maturity of the obligations involved, moneys in an amount that (together with any other moneys irrevocably committed under the annual contributions contract to the payment of principal and interest on those obligations) will suffice to provide for the payment when due of all installments of principal and interest on those obligations, which moneys under the terms of the agreement are required to be used for the purpose of paying the principal and interest on those obligations at their maturity.

"(N) Obligations issued by the International Bank for Reconstruction and Development, the European Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the Inter-American Investment Corporation, or the International Finance Corporation.

"(O) Obligations issued by any State or political subdivision or any agency of a State or political subdivision for housing, university, or dormitory purposes, which are at the time eligible for purchase by a national bank for its own account.

"(P) Obligations issued by the Tennessee Valley Authority.

"(Q) Obligations issued by the United States Postal Service.".

(2) Rule of construction.—The amendment made by paragraph (1)—

(A) may not be construed to make any substantive change in the meaning of any provision of section 5136 of the Revised Statutes (as in effect on the day before the effective date of the amendment); and

(B) shall not affect any regulation prescribed, any order issued, any interpretation provided, or any action taken before the effective date of the amendment under or pursuant to that section (as in effect on the day before that date).

(b) ADDITIONAL AMENDMENTS TO SECTION 5136 OF THE REVISED STATUTES.—Section 5136 of the Revised Statutes (as amended by subsection (a)(1)) is amended—

(1) in subsection (b), by adding at the end the following new paragraphs:

"(4) UNDERWRITING AND DEALING IN COMMERCIAL PAPER ALLOWED.—A national bank may underwrite and deal in any short-term security of prime quality and large dollar amounts that is exempt from registration requirements under section 3(a)(3) of the Securities Act of 1933 (hereafter referred to as 'commercial paper').

"(5) CERTAIN INFORMATION PROCESSING AND CLEARING FUNCTIONS.—No provision of this subsection shall be construed as prohibiting a national bank from performing the functions described in the second sentence of paragraph (22)(A) or paragraph (23)(B)(iii) of section 3(a) of the Securities Exchange Act of 1934 to the extent allowed under any such paragraph.";

(2) in subsection (d)(2), insert after subparagraph (Q) the following new subparagraphs:

"(R) Shares issued by and securities guaranteed by the Federal Agricultural Mortgage Corporation.

"(S) Obligations of the Financing Corporation.

"(T) Obligations of the Resolution Funding Corporation.";

(3) in subsection (c)(2)(A)(ii), by inserting "or depository institution holding companies" after "depository institutions" each place that term appears; and

(4) by adding at the end the following new subsection:

"(e) RESTRICTION ON SECURITIES POWERS.—Notwithstanding any provision of subsection (b), a national bank that is affiliated with a securities affiliate, as provided under section 10 of the Bank Holding Company Act of 1956, may not purchase or sell, as principal or agent, nor underwrite municipal securities or commercial paper, beginning 1 year after the date that the bank becomes affiliated with a securities affiliate.".

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) FEDERAL RESERVE ACT.—The 20th paragraph of section 9 of the Federal Reserve Act-(12 U.S.C. 335) is amended by striking "paragraph 'Seventh' of" and inserting "subsections (b), (c), and (d) of".

(2) NATIONAL HOUSING ACT.—Section 514 of the National Housing Act (12 U.S.C. 1733) is amended by striking "paragraph seventh of" and inserting "subsections (b) and (c) of".

(3) INTERNATIONAL BANKING ACT.—Section 4(g)(1) of the International Banking Act of 1978 (12 U.S.C. 3102(g)(1)) is amended by striking "paragraph 'Seventh' of" and inserting "subsection (c) of".

SEC. 717. SECURITIES AFFILIATIONS OF FDIC-INSURED BANKS.

(a) SECURITIES AFFILIATIONS.—Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following new subsection:

"(s) SECURITIES AFFILIATIONS OF INSURED BANKS.—

"(1) IN GENERAL.—An insured bank shall not be an affiliate of any company that, directly or indirectly, acts in the United States as an underwriter or dealer of any security, except—

"(A) as provided in section 10 of the Bank Holding Company Act of 1956; or

"(B) to the extent that subsection (b) or (c) of section 5136 of the Revised Statutes expressly authorizes a national bank to underwrite or deal in that security.

"(2) EXCEPTION.—This subsection does not apply to an insured bank described in subparagraph (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956.

"(3) GRANDFATHER PROVISION.—This paragraph does not prohibit—

"(A) the continuation of an affiliation that existed on July 15, 1991; or

"(B) any new affiliation by an insured bank that has an affiliation that would be prohibited if the affiliation were not covered by subparagraph (A).

"(4) TRANSITION RULE.—An affiliation that became unlawful as a result of the enactment of the Proxmire Financial Modernization Act of 1991, may continue until 2 years after the date of enactment of that Act.

"(5) DEFINITIONS.—For purposes of this subsection:

"(A) AFFILIATE.—The term 'affiliate' has the meaning given to that term in section 2(k) of the Bank Holding Company Act of 1956.

"(B) COMPANY.—The term 'company' has the meaning given to that term in section 2(b) of the Bank Holding Company Act of 1956.

"(C) DEALER.—The term 'dealer' has the meaning given to that term in section 3(a)(5) of the Securities Exchange Act of 1934.

"(D) SECURITY.—

"(i) IN GENERAL.—Except as provided in clause (ii) or (iii), the term 'security' has the meaning given to that term in section 3(a)(10) of the Securities Exchange Act of 1934.

"(ii) EXCEPTIONS.—The term 'security' does not include any of the following:

"(I) A contract of insurance.

"(II) A deposit account, savings account, certificate of deposit, or other deposit instrument issued by a depository institution.

"(III) A share account issued by a savings association if the account is insured under the Federal Deposit Insurance Act.

"(IV) A banker's acceptance.

"(V) A letter of credit issued by a depository institution.

"(VI) A debit account at a depository institution arising from a credit card or similar arrangement.

"(iii) Federal reserve board's authority to exempt traditional banking products.—The Board of Governors of the Federal Reserve System may by regulation exempt from the definition of 'security' a banking product that national banks have traditionally and customarily originated or handled (such as loan participations or mortgage notes) if the exemption is consistent with the purposes of this subsection.

"(E) Underwriter.—The term 'underwriter' has the meaning given to that term in section 2(11) of the Securities Act of 1933.".

(b) Conforming Amendments.—

(1) Penalties.—Section 18(j)(4)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1828(j)(4)(A)) is amended by striking "any provision of section 20 of the Banking Act of 1933" and inserting "any provision of subsection (s)".

(2) Repeal of superseded provision.—Section 18(j)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1828(j)(3)) is amended to read as follows:

"(3) Reserved.—".

SEC. 718. EFFECT ON STATE LAWS PROHIBITING THE AFFILIATION OF BANKS AND SECURITIES COMPANIES.

Section 7 of the Bank Holding Company Act of 1956 (12 U.S.C. 1846) is amended by inserting before the final period the following: ", except that no State may prohibit the affiliation of a bank or bank holding company with a securities affiliate solely because the securities affiliate is engaged in activities described in paragraph (1) or (2) of section 10(a) of this Act.".

SEC. 719. DIVERSIFIED FINANCIAL HOLDING COMPANIES.

(a) In General.—Section 4 of the Bank Holding Company Act (12 U.S.C. 1843) is amended by adding at the end the following new subsection:

"(k) Diversified Financial Holding Companies.—

"(1) In general.—Notwithstanding subsection (a), a diversified financial holding company may engage in, or acquire or retain direct or indirect ownership or control of shares of any company engaged in, any of the following activities in which the diversified financial holding company was lawfully engaged in the United States, directly or through a subsidiary, as of July 1, 1991:

"(A) insurance underwriting activities;

"(B) insurance agency activities; and

"(C) any other activities that the Board, after notice and opportunity for hearing, has determined to be financial.

"(2) Restrictions on joint marketing.—No subsidiary bank of a diversified financial holding company shall—

"(A) offer or market products or services of an affiliate that are not permissible for bank holding companies to provide under section 10 or subsection (c)(8) of this section; or

"(B) permit its products or services to be offered or marketed in connection with products or services of an affiliate, unless—

"(i) the Board, by regulation, has determined that such products and services are permissible for bank holding companies to provide under section 10 or subsection (c)(8) of this section; or

"(ii) such products and services were being so offered or marketed as of March 5, 1987, and then only in the same manner as they were being offered or marketed as of that date.".

(b) DEFINITION.—Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) is amended by adding at the end the following new subsection:

"(p) DIVERSIFIED FINANCIAL HOLDING COMPANY.—For purposes of this Act, the term 'diversified financial holding company' means a bank holding company that is described in each of the following paragraphs:

"(1) ENGAGES ONLY IN FINANCIAL ACTIVITIES.—The company engages only in activities—

"(A) permissible for bank holding companies under section 4 of this Act; or

"(B) permissible under section 4(i)(1).

"(2) 80-PERCENT TEST.—On average during the preceding calendar year, the company devoted 80 percent or more of its consolidated assets to activities permissible under section 10 or paragraph (8), (13), or (14) of section 4(c), excluding—

"(A) activities conducted by any insured depository institution or subsidiary of an insured depository institution; and

"(B) insurance activities that are permissible under section 4(c)(13) but not permissible under section 4(c)(8), to the extent that those activities exceed 10 percent of the company's consolidated assets.

"(3) LIMIT ON INSURED DEPOSITORY INSTITUTIONS AND THEIR SUBSIDIARIES AS PERCENTAGE OF ASSETS.—On average during the preceding calendar year, insured depository institutions and their subsidiaries constituted 20 percent or less of the company's consolidated assets.

"(4) GLOBAL LIMIT ON DEPOSITORY INSTITUTIONS AND THEIR SUBSIDIARIES AS PERCENTAGE OF ASSETS.—On average during the preceding calendar year, the following entities in aggregate constituted 40 percent or less of the company's consolidated assets:

"(A) insured depository institutions and their subsidiaries;

"(B) uninsured depository institutions and their subsidiaries;

"(C) foreign banks (as defined in section 1(b)(7) of the International Banking Act of 1978) and their subsidiaries; and

"(D) other depository institutions, whether or not in the United States, and their subsidiaries.

"(5) Election.—The company has filed with the Board a written notice of its intent to be treated as a diversified financial holding company.".

SEC. 720. EFFECTIVE DATE.

The amendments made by this subtitle shall become effective 90 days after the date of enactment of this Act.

Subtitle B—Brokers and Dealers

SEC. 731. DEFINITION OF BROKER.

Section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)) is amended to read as follows:

"(4) 'Broker'.—

"(A) In general.—The term 'broker' means any person engaged in the business of effecting transactions in securities for the account of others.

"(B) Exclusion of banks.—The term 'broker' does not include a bank unless such bank publicly solicits the business of effecting securities transactions for the account of others or is compensated for such business by the payment of commissions or similar remuneration based on effecting transactions in securities (other than fees calculated as a percentage of assets under management) in excess of the bank's incremental costs directly attributable to effecting such transactions (hereafter referred to as 'incentive compensation').

"(C) Exemption for certain bank activities.—A bank shall not be deemed to be a 'broker' because it engages in any of the following activities:

"(i) Third party brokerage arrangements.—The bank enters into a contractual or other arrangement with a broker or dealer registered under this title under which the broker or dealer offers brokerage services on or off the premises of the bank if—

"(I) such broker or dealer is clearly identified as the person performing the brokerage services;

"(II) bank employees perform only clerical or ministerial functions in connection with brokerage transactions, unless such employees are qualified as registered representatives pursuant to the requirements of a self-regulatory organization;

"(III) bank employees do not receive incentive compensation for any brokerage activities unless such employees are qualified as registered representatives pursuant to the requirements of a self-regulatory organization; and

"(IV) such services are provided by the broker or dealer on a basis in which all customers are fully disclosed.

"(ii) Trust activities.—The bank engages in trust activities (including effecting transactions in the course of such trust activities) permissible for national banks under the first section of the Act of September 28, 1962 or for State banks under relevant State trust statutes or law (including securities safekeeping, self-directed individual retirement accounts, or managed agency accounts or other functionally equivalent accounts of a bank) unless the bank—

"(I) publicly solicits brokerage business, other than by advertising that it effects transactions in securities in conjunction with advertising its other trust activities; or

"(II) receives incentive compensation for such activities.

"(iii) PERMISSIBLE SECURITIES TRANSACTIONS.—The bank effects transactions in exempted securities, other than municipal securities, or in commercial paper, banker's acceptances, or commercial bills.

"(iv) MUNICIPAL SECURITIES.—The bank effects transactions in municipal securities, and has not been affiliated with a securities affiliate under section 10 of the Bank Holding Company Act of 1956 for more than 1 year.

"(v) EMPLOYEE AND SHAREHOLDER BENEFIT PLANS.—The bank effects transactions as part of any bonus, profit-sharing, pension, retirement, thrift, savings, incentive, stock purchase, stock ownership, stock appreciation, stock option, dividend reinvestment, or similar plan for employees or shareholders of an issuer or its subsidiaries;

"(vi) SWEEP ACCOUNTS.—The bank effects transactions as part of a program for the investment or reinvestment of bank deposit funds into any no-load, open-end investment company registered under the Investment Company Act of 1940 that holds itself out as a money market fund.

"(vii) AFFILIATE TRANSACTIONS.—The bank effects transactions for the account of any affiliate of the bank, as defined in section 2 of the Bank Holding Company Act of 1956.

"(viii) PRIVATE SECURITIES OFFERINGS.—The bank—

"(I) effects sales as part of a primary offering of securities by an issuer, not involving a public offering, pursuant to section 3(b), 4(2), or 4(6) of the Securities Act of 1933 and the rules and regulations issued thereunder;

"(II) effects such sales exclusively to an accredited investor, as defined in section 3 of the Securities Act of 1933; and

"(III) if affiliated with a securities affiliate, as provided under section 10 of the Bank Holding Company Act of 1956, has not been so affiliated for more than 1 year.

"(ix) DE MINIMUS EXEMPTION.—The bank effects not more than 1,000 transactions in any calendar year in securities, other than transactions referenced in clauses (i) through (viii), if the bank does not have a subsidiary or affiliate registered as a broker or dealer under section 15.

"(D) EXEMPTION FOR ENTITIES SUBJECT TO SECTION 15(e).—The term 'broker' does not include a bank that is subject to—

"(i) section 15(e); and

"(ii) such restrictions and requirements as the Commission deems appropriate.".

SEC. 732. DEFINITION OF DEALER.

Section 3(a)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(5)) is amended to read as follows:

"(5) 'DEALER'.—

"(A) IN GENERAL.—The term 'dealer' means any person engaged in the business of buying and selling securities for his own account through a broker or otherwise.

"(B) EXCEPTIONS.—Such term does not include—

"(i) a person that buys or sells securities for his or her own account, either individually or in a fiduciary capacity, but not as a part of a regular business; or

"(ii) a bank, to the extent that the bank—

"(I) buys and sells commercial paper, banker's acceptances, or commercial bills, or exempted securities, other than municipal securities;

"(II) buys and sells municipal securities and has not been affiliated with a securities affiliate, as provided under section 10 of the Bank Holding Company Act of 1956 for more than 1 year;

"(III) buys and sells securities for investment purposes for the bank or for accounts for which the bank acts as a trustee or fiduciary; or

"(IV) engages in the issuance or sale through a grantor trust or otherwise of securities backed by or representing an interest in obligations (other than securities of which the bank is not the issuer) originated or purchased by the bank, its affiliates, or its subsidiaries, and the bank has not been affiliated with a securities affiliate under section 10 of the Bank Holding Company Act of 1956 for more than 1 year.".

SEC. 733. POWER TO EXEMPT FROM THE DEFINITIONS OF BROKER AND DEALER.

Section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c) is amended by adding at the end the following:

"(e) EXEMPTION FROM DEFINITION OF BROKER OR DEALER.—The Commission, by regulation or order, upon its own motion or upon application, may conditionally or unconditionally exclude any person or class of persons from the definitions of 'broker' or 'dealer', if the Commission finds that such exclusion is consistent with the public interest, the protection of investors, and the purposes of this title.".

SEC. 734. EFFECTIVE DATE.

This subtitle shall become effective 270 days after the date of enactment of this Act.

Subtitle C—Bank Investment Company Activities

SEC. 741. CUSTODY OF INVESTMENT COMPANY ASSETS BY AFFILIATED BANK.

(a) MANAGEMENT COMPANIES.—Section 17(f) of the Investment Company Act of 1940 (15 U.S.C. 80a-17(f)) is amended—

(1) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(2) by designating the five sentences of such subsection as paragraphs (1) through (5), respectively, and by indenting those paragraphs appropriately; and

(3) by adding at the end the following new paragraph:

"(6) Notwithstanding paragraph (1)(A), if a bank described in paragraph (1) or an affiliated person of such bank is an affiliated person, promoter, organizer, or sponsor of, or principal underwriter for the registered company, such bank may only serve as custodian under this subsection in accordance with such rules, regulations, or orders as the Commission may prescribe, consistent with the protection of investors, after consulting in writing with the appropriate Federal banking agency, as defined in section 3 of the Federal Deposit Insurance Act.".

(b) UNIT INVESTMENT TRUSTS.—Section 26(a)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a-26(a)(1)) is amended by inserting after "bank" the following: "not affiliated with such underwriter or depositor, or if such bank is so affiliated, only in accordance with such regulations or orders as the Commission may prescribe, consistent with the protection of investors, after consulting in writing with the appropriate Federal banking agency, as defined in section 3 of the Federal Deposit Insurance Act".

(c) FIDUCIARY DUTY OF CUSTODIAN.—Section 36(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-35(a)) is amended—

(1) in paragraph (1), by striking "or" at the end;

(2) in paragraph (2), by striking the period at the end and inserting "; or"; and

(3) by inserting after paragraph (2) the following:

"(3) as custodian.".

SEC. 742. AFFILIATED TRANSACTIONS.

(a) INDEBTEDNESS TO AFFILIATED PERSON.—Section 10(f) of the Investment Company Act of 1940 (15 U.S.C. 80a-10(f)) is amended in the first sentence—

(1) by inserting "(1)" before "a principal underwriter"; and

(2) by inserting before the period ", or (2) the proceeds of which will be used to retire an indebtedness owed to an affiliated person of such registered company".

(b) AFFILIATED PERSON OF INVESTMENT COMPANY.—Section 10(f) of the Investment Company Act of 1940 is amended by adding at the end the following: "For purposes of this subsection, a person that is under common control with an investment adviser shall be deemed to be an affiliated person of the registered investment company advised by such investment adviser.

SEC. 743. BORROWING FROM AN AFFILIATED BANK.

Section 18(f) of the Investment Company Act of 1940 (15 U.S.C. 80a–18(f)) is amended by adding at the end the following:

"(3) Notwithstanding the provisions of paragraph (1), it shall be unlawful for any registered investment company to borrow from any bank if such bank or any affiliated person thereof is an affiliated person, promoter, organizer, or sponsor of, or principal underwriter for, such company, except that the Commission may, by rule, regulation, or order, permit such borrowing that the Commission finds to be in the public interest and consistent with the protection of investors.".

SEC. 744. INDEPENDENT DIRECTORS.

(a) INTERESTED PERSON.—Section 2(a)(19)(A)(v) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)(A)(v)) is amended by striking "1934 or any affiliated person of such a broker or dealer, and" and inserting "1934 or any person that, at any time during the preceding 6 months, has acted as custodian or transfer agent or has executed any portfolio transactions for, engaged in any principal transactions with, or loaned money to, the investment company, or any other investment company having the same investment adviser, principal underwriter, sponsor, or promoter, or any affiliated person of such a broker, dealer, or person, and".

(b) AFFILIATION OF DIRECTORS.—Section 10(c) of the Investment Company Act of 1940 (15 U.S.C. 80a–10(c)) is amended by striking "bank, except" and inserting "bank (and its subsidiaries) or any one bank holding company (and its affiliates and subsidiaries), as those terms are defined in the Bank Holding Company Act of 1956, except".

(c) EFFECTIVE DATE.—The provisions of subsection (a) of this section shall become effective 1 year after the date of enactment of this subtitle.

SEC. 745. ADDITIONAL SEC DISCLOSURE AUTHORITY.

(a) MISREPRESENTATION.—Section 35(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–34(a)) is amended to read as follows:

"SEC. 35. MISREPRESENTATIONS.

"(a) MISREPRESENTATION OF GUARANTEES.—

"(1) IN GENERAL.—It shall be unlawful for any person, in issuing or selling any security of which a registered investment company is the issuer, to represent or imply in any manner whatsoever that such security or company—

"(A) has been guaranteed, sponsored, recommended, or approved by the United States or any agency or officer thereof;

"(B) has been insured by the Federal Deposit Insurance Corporation; or

"(C) is guaranteed by or is otherwise an obligation of any bank or insured institution.

"(2) DISCLOSURES.—The Commission shall require the person issuing or selling the securities of a registered investment company to prominently disclose, in writing or orally, as appropriate, that the investment company or any security issued by it is not insured by the Federal Deposit Insurance Corporation and is not guaranteed by an affiliated bank or insured institution, and is not otherwise an obligation of such a bank or insured institution, in any case where—

"(A) a bank holding company, bank, or separately identifiable division or department of a bank, or any affiliate or subsidiary thereof is an investment adviser, organizer, sponsor, promoter, principal underwriter, or an affiliated person of the investment company; or

"(B) a bank or an affiliated person of a bank is offering or selling securities of the investment company.

The requirement of any disclosures referred to above shall be subject to regulations adopted by the Commission, after consultation with the appropriate Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act).".

(b) DECEPTIVE USE OF NAMES.—Section 35(d) of the Investment Company Act of 1940 (15 U.S.C. 80a-34(d)) is amended by inserting after the first sentence the following: "It shall be deceptive and misleading for any registered investment company which has an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or any affiliated person thereof as an affiliated person, promoter, or principal underwriter, to adopt, as part of the name, title, or logo of such company, or of any security of which it is the issuer, any word or design which is the same as or similar to, or a variation of, the name, title, or logo of such insured depository institution or affiliate thereof. The Commission, by rules or regulations upon its own motion or by order upon application, may conditionally or unconditionally exempt an investment company from the preceding sentence if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of this title.".

SEC. 716. DEFINITION OF BROKER UNDER THE INVESTMENT COMPANY ACT OF 1940.

Section 2(a)(6) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(6)) is amended to read as follows:

"(6) 'Broker' has the same meaning as in the Securities Exchange Act of 1934, except that it does not include any person solely by reason of the fact that such person is an underwriter for 1 or more investment companies.".

SEC. 717. DEFINITION OF DEALER UNDER THE INVESTMENT COMPANY ACT OF 1940.

Section 2(a)(11) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(11)) is amended to read as follows:

"(11) 'Dealer' has the same meaning as in the Securities Exchange Act of 1934, but does not include an insurance company or investment company.".

SEC. 718. REMOVAL OF THE EXCLUSION FROM THE DEFINITION OF INVESTMENT ADVISER FOR BANKS THAT ADVISE INVESTMENT COMPANIES.

(a) INVESTMENT ADVISER.—Section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(11)) is amended in subparagraph (A), by striking "investment company" and inserting "investment company, except that the term 'investment adviser' includes any bank or bank holding company to the extent that such bank or bank holding company acts as an investment adviser to a registered investment company, or if, in the case of a bank, such services are performed through a separately identifiable department or division, the department or division, and not the bank itself shall be deemed to be the 'investment adviser' "; and

(b) SEPARATELY IDENTIFIABLE DEPARTMENT OR DIVISION.—Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)) is amended by adding at the end the following:

"(25) 'Separately identifiable department or division' of a bank means a unit—

"(A) that is under the direct supervision of an officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's investment adviser activities for 1 or more investment companies, including the supervision of all bank employees engaged in the performance of such activities; and

"(B) for which all of the records relating to its investment adviser activities, are separately maintained in or extractable from such unit's own facilities or the facilities of the bank, and such records are so maintained or otherwise accessible as to permit independent examination and enforcement of this Act and rules and regulations promulgated under this Act.".

SEC. 749. DEFINITION OF BROKER UNDER THE INVESTMENT ADVISERS ACT OF 1940.

Section 202(a)(3) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(3)) is amended to read as follows:

"(3) 'Broker' has the same meaning as in the Securities Exchange Act of 1934.".

SEC. 750. DEFINITION OF DEALER UNDER THE INVESTMENT ADVISERS ACT OF 1940.

Section 202(a)(7) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(7)) is amended to read as follows:

"(7) 'Dealer' has the same meaning as in the Securities Exchange Act of 1934, but does not include an insurance company or investment company.".

SEC. 751. INTERAGENCY NOTIFICATION AND CONSULTATION.

The Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) is amended by inserting after section 210 the following new section:

"SEC. 210A. NOTIFICATION AND CONSULTATION.

"(a) IN GENERAL.—

"(1) NOTICE.—Prior to the examination of, the entry of an order of investigation of, or the commencement of any disciplinary or law enforcement proceedings against, any bank holding company, bank, or department or division of a bank that is a registered investment adviser, the Commission shall give notice to the appropriate Federal banking agency, of the identity of such bank holding company, bank, or department or division and the nature of such proposed action.

"(2) EXTENSION.—If the Commission determines that the protection of investors requires immediate action by the Commission and prior notice under paragraph (1) is not practical under the circumstances, the appropriate Federal banking agency shall be notified as promptly as possible after action by the Commission.

"(b) EXAMINATION RESULTS.—The Commission and the appropriate Federal banking agency shall exchange the results of any examination of any bank holding company, bank, or department or division of a bank that is a registered investment adviser, to the extent necessary for the Commission or agency to carry out its statutory responsibilities.

"(c) EFFECT ON OTHER AUTHORITY.—Nothing herein shall limit in any respect the authority of the appropriate Federal banking agency with respect to such bank holding company, bank, or department or division under any provision of law.

"(d) DEFINITION.—For purposes of this section, the term 'appropriate Federal banking agency' shall have the same meaning as in section 3 of the Federal Deposit Insurance Act.".

SEC. 752. TREATMENT OF BANK COMMON TRUST FUNDS.

(a) SECURITIES ACT OF 1933.—Section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is amended by striking "or any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by a bank in its capacity as trustee, executor, administrator, or guardian" and inserting "or any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term 'investment company' under section 3(c)(3) of the Investment Company Act of 1940".

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 3(a)(12)(A)(iii) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(12)(A)(iii)) is amended to read as follows:

> "(iii) any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term 'investment company' under section 3(c)(3) of the Investment Company Act of 1940.".

(c) INVESTMENT COMPANY ACT OF 1940.—Section 3(c)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c)(3)) is amended by inserting before the period the following: ", if—

> "(A) such fund is employed by the bank solely as an aid to the administration of trusts, estates, or other accounts created and maintained for a fiduciary purpose; and
>
> "(B) except in connection with the ordinary advertising of the bank's fiduciary services, interests in such fund are not—
>
> > "(i) advertised; or
> >
> > "(ii) offered for sale to the general public.".

(d) TAX EFFECT.—It is the sense of the Congress that the public interest would be furthered by enacting legislation to amend section 584 of the Internal Revenue Code of 1986 by inserting after subsection (g) the following new subsection:

"(h) CONVERSION, MERGERS, OR REORGANIZATION OF COMMON TRUST FUNDS.—Notwithstanding any other provision of the Internal Revenue Code, any transfer of all or substantially all of the assets of a common trust fund taxable under this section to a registered investment company taxable under subchapter M shall not result in a gain or loss to the participants in such common trust fund where the transfer is a result of a merger, conversion, reorganization, transfer, or other similar transaction or series of transactions.".

SEC. 753. SECURITIES AND EXCHANGE COMMISSION STUDY AND REPORT ON BANK AND INSURANCE POOLED INVESTMENT VEHICLES.

(a) IN GENERAL.—The Securities and Exchange Commission, in consultation with the Secretary of Labor and the Office of the Comptroller of the Currency, shall examine—

(1) the appropriate treatment of bank collective investment funds and separate accounts under the securities laws and the Employee Retirement Income Security Act; and

(2) the appropriate treatment of common trust funds under the securities laws.

(b) REPORT.—Not later than 6 months after the date of enactment of this Act, the Securities and Exchange Commission shall transmit to the Congress a final report which shall contain a detailed statement of findings and conclusions, including recommendations for such administrative and legislative action as the Commission deems advisable.

SEC. 754. INVESTMENT ADVISERS PROHIBITED FROM HAVING CONTROLLING INTEREST IN REGISTERED INVESTMENT COMPANY.

Section 15 of the Investment Company Act of 1940 (15 U.S.C. 80a-15) is amended by adding at the end the following new subsection:

"(g) CONTROLLING INTEREST IN INVESTMENT COMPANY PROHIBITED.—

"(1) IN GENERAL.—If any investment adviser to a registered investment company, or an affiliated person of that investment adviser, also holds shares of the investment company in a trustee or fiduciary capacity, that investment adviser or affiliated person may own, directly or indirectly, a controlling interest in that registered investment company only—

"(A) if it passes the power to vote the shares of the investment company through to—

"(i) the beneficial owners of the shares;

"(ii) any person acting in a fiduciary capacity who is not an affiliated person of that investment adviser or any affiliated person thereof; or

"(iii) any person authorized to receive statements and information with respect to the trust who is not an affiliated person of that investment adviser or any affiliated person thereof;

"(B) if it votes the shares of the investment company held by it in the same proportion as shares held by all other shareholders of the investment company; or

"(C) as otherwise permitted under such rules, regulations, or orders as the Commission may prescribe for the protection of investors.

"(2) Exemption.—Paragraph (1) shall not apply to any investment adviser to a registered investment company, or an affiliated person of that investment adviser, holding shares of the investment company in a trustee or fiduciary capacity if that registered investment company consists solely of assets of—

"(A) any common trust fund or similar fund described in section 3(c)(3) of the Investment Company Act of 1940;

"(B) any employees' stock bonus, pension, or profit-sharing trust that qualifies under section 401 of the Internal Revenue Code of 1986;

"(C) any governmental plan described in section 3(a)(2)(C) of the Securities Act of 1933; or

"(D) any collective trust fund maintained by a bank and consisting solely of assets of trusts or governmental plans described in subparagraph (B) or (C).".

SEC. 755. PURCHASE OF INVESTMENT COMPANY SECURITIES AS FIDUCIARY.

(a) In General.—Section 17 of the Investment Company Act of 1940 (15 U.S.C. 80a-17) is amended by adding at the end the following:

"(k) Purchase of Investment Company Securities as Fiduciary.—

"(1) In general.—An investment adviser to a registered investment company, or an affiliated person of the investment adviser, promoter, organizer, or sponsor of the registered investment company, or principal underwriter for the registered company may purchase securities issued by such investment company for the account of a beneficiary as fiduciary, only if the beneficiary of the fiduciary account has received disclosure of such information as the Commission shall prescribe under paragraph (2).

"(2) Disclosure rules.—The Commission shall prescribe, by rule, regulation, or order, the manner, form, and content of the information required to be disclosed under paragraph (1), as the Commission determines necessary or appropriate in the public interest and for the protection of investors.".

(b) Examination of Trust Department Securities Purchases.—Section 10(d) of the Federal Deposit Insurance Act (12 U.S.C. 1820(d)), as added by section 204, is amended by adding at the end the following:

"(5) Trust department examination.—In performing an examination under this subsection, the appropriate Federal banking agency shall examine purchases by an insured depository institution's trust department or division of the securities of an affiliated investment company, or an investment company that is an affiliated person of an affiliated person of the institution (as those terms are defined in sections 2 and 3 of the Investment Company Act of 1940), to assure compliance with applicable Federal and State trust laws.".

SEC. 756. CONFORMING CHANGE IN DEFINITION.

Section 2(a)(5) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(5)) is amended by striking "(A) a banking organization organized under the laws of the United States" and inserting "(A) a depository institution, as that term is defined in section 3 of the Federal Deposit Insurance Act".

SEC. 757. EFFECTIVE DATE.

This subtitle shall become effective 270 days after the date of enactment of this Act, except that section 753 shall become effective on such date of enactment.

Subtitle D—Depositor Protection and Anti-Fraud

SEC. 761. SHORT TITLE.

This subtitle may be cited as the "Depositor Protection and Anti-Fraud Act of 1991".

SEC. 762. LIMITATIONS ON CERTAIN NONDEPOSIT MARKETING ACTIVITIES IN RETAIL BRANCHES OF FDIC-INSURED DEPOSITORY INSTITUTIONS.

(a) In General.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended by adding at the end the following new subsection:

"(h) Regulation of Certain Nondeposit Marketing Activities in Retail Branches of Insured Depository Institutions.—

"(1) Prohibition on selling certain instruments.—No financial institution may permit any evidence of indebtedness of, or ownership interest in, that institution or any affiliate to be sold or offered for sale in any of the following:

"(A) A domestic branch of that institution at which insured deposits are accepted.

"(B) That institution's head office, if it accepts insured deposits and is located in the United States.

"(2) Exceptions.—Paragraph (1) shall not apply with respect to any of the following:

"(A) A deposit in a financial institution.

"(B) A means of payment to a third party, such as a traveler's check, cashier's check, teller's check, or money order, or other similar negotiable instrument typically sold by financial institutions in the ordinary course of business.

"(C) An interest in an investment company registered under the Investment Company Act of 1940.

"(D) A sale of instruments in large dollar amounts to a sophisticated investor.

"(E) A sale of instruments pursuant to converting a financial institution from mutual to stock ownership if that conversion has been approved by the appropriate Federal banking agency and, where applicable, any appropriate State agency.

"(3) Regulatory exemptions.—The Commission may by regulation provide exemptions from paragraph (1) if it finds at a minimum—

"(A) the exemption is in the public interest;

"(B) the purchasers would not be likely to confuse the evidence of indebtedness or ownership interest with an insured deposit because of the manner in which it is sold or offered for sale, or for any other reason; and

"(C) sales of the evidence of indebtedness or ownership interest would be subject to the sales practices rules or standards of self-regulatory organization.".

(b) REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Commission shall promulgate final regulations to administer and carry out the amendment made by this section.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective immediately upon the effective date of final regulations promulgated by the Commission under subsection (b), but in no event later than 270 days after the date of enactment of this Act.

SEC. 763. LIMITATIONS ON CERTAIN NONDEPOSIT MARKETING ACTIVITIES IN RETAIL BRANCHES OF FEDERALLY INSURED CREDIT UNIONS.

(a) IN GENERAL.—Section 205 of the Federal Credit Union Act (12 U.S.C. 1785) is amended by adding at the end the following new subsection:

"(j) REGULATION OF CERTAIN NONDEPOSIT MARKETING ACTIVITIES IN RETAIL BRANCHES OF INSURED CREDIT UNIONS.—

"(1) PROHIBITION ON SELLING CERTAIN INSTRUMENTS.—No insured credit union may permit any evidence of indebtedness of that credit union or any evidence of indebtedness of, or ownership interest in, any affiliate of that credit union to be sold or offered for sale in any of the following:

"(A) A domestic branch of that credit union at which insured shares are accepted.

"(B) That credit union's head office, if it accepts insured deposits and is located in the United States.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply with respect to any of the following:

"(A) An insured share in an insured credit union.

"(B) A means of payment to a third party, such as a traveler's check, cashier's check, teller's check, or money order, or other similar negotiable instrument typically sold by federally insured depository institutions in the ordinary course of business.

"(C) An interest in an investment company registered under the Investment Company Act of 1940.

"(D) A sale of instruments in large dollar amounts to a sophisticated investor.

"(3) REGULATORY EXEMPTIONS.—The Board shall by regulation provide exemptions from paragraph (1) if it finds at a minimum:

"(A) the exemption is in the public interest;

"(B) the purchasers would not be likely to confuse the evidence of indebtedness or ownership interest with an insured share because of the manner in which it is sold or offered for sale, or for any other reason;

"(C) the evidence of indebtedness or ownership interest would be sold or offered for sale on terms (including price) no less favorable for shareholders than for persons similarly situated who are not shareholders;

"(D) the seller or offeror institutes and follows procedures to determine before selling or offering to sell the instrument whether the instrument is appropriate for the purchaser;

"(E) no broker or a dealer registered under the Securities Exchange Act of 1934 (or any associated person) receives a greater commission in connection with a sale described in paragraph (1) than for a sale not described in paragraph (1) of like kind or similar principal amount; and

"(F) none of the following persons (other than a broker or dealer registered under the Securities Exchange Act of 1934, or an associated person) receives what is in substance a sales commission which is greater than the amount typical for the industry or that exceeds the amount that could have been received by a person subject to subparagraph (E) in connection with the sale or offer to sell described in paragraph (1):

"(i) The insured credit union.

"(ii) An affiliate of the insured credit union.

"(iii) An employee of the insured credit union or any of its affiliates, or any person under the direction or control of the insured credit union or any of its affiliates.

"(4) AFFILIATE DEFINED.—For the purposes of this subsection, the term 'affiliate' means any company that controls, is controlled by, or is under common control with another company.

"(5) ANNUAL REPORTS REQUIRED.—The Board shall report annually to the Chairman and the ranking minority member of the Committee on Banking, Housing, and Urban Affairs of the Senate and the Chairman and the ranking minority member of the Committee on Banking, Finance and Urban Affairs of the House of Representatives on any differences between the Board's regulations under this subsection and the regulations adopted by the Securities and Exchange Commission under section 15(f) of the Securities Exchange Act of 1934. The report shall explain the reasons for any such differences, and shall be published in the Federal Register.

"(6) EFFECT ON SEC AUTHORITY.—Nothing contained in this subsection supersedes or limits the jurisdiction or authority conferred on the Securities and Exchange Commission, and no exemption from the provisions of this subsection shall affect the applicability of any of the securities laws, as that term is defined in section 3(a)(47) of the Securities Exchange Act, or the rules and regulations thereunder.".

(b) REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the National Credit Union Administration Board shall promulgate final regulations to administer and carry out the purposes of this section.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective immediately upon the effective date of final regulations promulgated under subsection (b), but in no event later than 270 days after the date of enactment of this Act.

Subtitle E—Insurance Activities

SEC. 771. INSURANCE AGENCY ACTIVITIES OF NATIONAL BANKS.

(a) Conforming National Bank Insurance Agency Powers to State Law.—Except as otherwise provided in subsection (b), in each State in which a national bank or any of its branches is located, the bank may, as agent, solicit and sell insurance to and collect premiums from residents of the State and individuals employed in the State, to the extent (but only to the extent) that the State permits banks chartered under the laws of the State to engage in those activities in that State.

(b) Insurance Agency Powers of National Banks Located in Rural Areas.—

(1) In general.—A national bank may, in any place with a population not exceeding 5,000 (as shown by the preceding decennial census) in which the bank or any of its branches is located, solicit and sell insurance to and collect premiums from residents of the place and individuals employed in the place and other such places within the State.

(2) Guarantees prohibited.—In exercising the powers granted by paragraph (1), a national bank shall not—

(A) assume or guarantee the payment of any premium on insurance policies issued through the bank's agency by the insurance company for which the bank is acting as agent; or

(B) guarantee the truth of any statement made by an assured in filing that person's application for insurance.

(c) Resident Companies.—For purposes of this section, the term "residents of the State" includes—

(1) companies incorporated in, or organized under the laws of, the State;

(2) companies licensed to do business in the State; and

(3) companies having an office in the State.

(d) State Defined.—For purposes of this section, the term "State" has the same meaning as in section 3 of the Federal Deposit Insurance Act.

(e) Conforming Amendment.—Chapter 461 of the Act of September 7, 1916 (39 Stat. 753; 12 U.S.C. 92 note), as amended, is further amended by striking "That in addition to the powers now vested by law in national banking associations" and all that follows through "filing his application for insurance.".

(f) Effective Date.—This section shall take effect 120 days after the date of enactment of this Act.

SEC. 772. INSURANCE UNDERWRITING IN BANK RESTRICTED.

(a) In General.—Section 24 of the Federal Deposit Insurance Act (as added by section 211(a) of this Act) is amended—

(1) by redesignating subsection (f) as subsection (g); and

(2) by inserting after subsection (e) the following new subsection:

"(f) **Insurance Underwriting.**—

"(1) **In general.**—An insured State bank shall not, directly or indirectly, provide insurance as principal except to the extent permissible for a national bank.

"(2) **Exceptions.**—

"(A) **In general.**—An insured State bank or subsidiary of such a bank that was lawfully providing insurance as principal in that State on July 15, 1991, may continue to provide, as principal, insurance of the same type to residents of the State (including residents described in subparagraph (B), but only on behalf of their employees resident in the State), individuals employed in the State, and any other person to whom the bank or subsidiary has provided insurance as principal, without interruption, since such person resided in or was employed in such State.

"(B) **Resident companies.**—For purposes of subparagraph (A), the term 'residents of the State' includes—

"(i) companies incorporated in, or organized under the laws of, the State;

"(ii) companies licensed to do business in the State; and

"(iii) companies having an office in the State.

"(C) **Title insurance.**—An insured State bank that was providing title insurance as principal through a subsidiary on or before July 1, 1991 may continue to provide such insurance through a subsidiary if the bank was required to be empowered to provide title insurance as a condition of its initial chartering under State law.".

(b) **Effective Date; Transition Rule.**—

(1) **Effective date.**—The amendment made by this section shall take effect 90 days after the date of enactment of this Act.

(2) **Transition rule.**—An insured State bank or subsidiary of an insured State bank that, as of the date of enactment of this Act, was lawfully engaged in any activity prohibited by the amendment made by this section may continue to engage in that activity during the period ending 1 year after that date of enactment.

SEC. 773. CUSTOMER PROTECTION.

(a) **Confidential Customer Information.**—

(1) **In general.**—No bank holding company or subsidiary of a bank holding company may use, directly or indirectly, any confidential customer information for the purpose of engaging in any insurance activity without the prior written consent of the customer.

(2) **Definition.**—For the purposes of this subsection, the term "confidential customer information" means information that is proprietary to a bank and—

(A) includes an evaluation of creditworthiness; demographic information concerning the customer and the customer's family; the type or amount of any loans outstanding; the amount of money held on deposit with an insured depository institution; and the expiration date, coverage, and history of any policy of insurance; but

(B) does not include the name or address of any customer.

(b) Favoring Captive Agents.—

(1) In general.—No bank holding company or subsidiary of a bank holding company may directly or indirectly—

(A) require, as a condition of providing any product or service to any customer, or any renewal of any contract for providing such product or service, that the customer acquire, finance, or negotiate any policy or contract of insurance through a particular insurer, agent, or broker; or

(B) solicit the sale of any insurance required under the terms of any proposed loan or extension of credit from the bank holding company or subsidiary to a customer before the customer has received a written commitment with respect to such loan or extension of credit.

(2) Exception for insurance required for credit agreement.—Nothing in this subsection shall prevent a bank holding company or subsidiary from placing insurance on real or personal property if a customer has failed to provide reasonable evidence of required insurance in accordance with the terms of a loan or credit document.

SEC. 774. INTERSTATE INSURANCE AGENCY ACTIVITIES.

Section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843) is amended by adding at the end the following:

"(l) Interstate Insurance Agency Activities.—

"(1) In general.—No bank holding company may permit any subsidiary bank, or any subsidiary of that bank, to sell insurance as an agent or broker beyond the borders of the State in which the subsidiary bank is chartered unless the statutory laws of the nonchartering State expressly authorize such insurance activities in that State, by language to that effect and not merely by implication.

"(2) Continuation of certain activities.—A bank holding company may permit any subsidiary bank, or any subsidiary of that bank, to continue to sell insurance as an agent or broker beyond the borders of the State in which the subsidiary bank is chartered—

"(A) if that insurance insures against the same types of risks as, or is otherwise functionally equivalent to, insurance that the bank or subsidiary was lawfully selling, as agent or broker, on June 1, 1991; and

"(B) subject to the regulation and control of the State in which the insurance is sold.".

TITLE VIII—THRIFT-TO-BANK CONVERSIONS

SEC. 801. SHORT TITLE.

This title may be cited as the "Thrift-To-Bank Conversion Act of 1991".

SEC. 802. STREAMLINING CONVERSION PROCEDURES.

(a) AMENDMENT TO THE NATIONAL BANK ACT.—Section 5154 of the Revised Statutes (12 U.S.C. 35) is amended to read as follows:

"SEC. 5154. ORGANIZATION OF SAVINGS ASSOCIATIONS OR STATE BANKS AS NATIONAL BANKS.

"(a) CONVERSION AUTHORITY.—A savings association or State bank, as defined in section 3 of the Federal Deposit Insurance Act, including a bank or savings association owned in mutual form, may be converted into a national bank if—

"(1) the institution has capital sufficient to entitle it to become a national bank under applicable provisions of law; and

"(2) such conversion—

"(A) is approved by the vote of not less than 51 percent of the total outstanding votes of the institution's shareholders or members;

"(B) would not be in contravention of any applicable Federal or State law; and

"(C) is approved by the Comptroller of the Currency (hereafter in this section referred to as the 'Comptroller').

"(b) POST-CONVERSION RIGHTS, DUTIES, AND AUTHORITIES.—After the conversion of a depository institution into a national bank in accordance with subsection (a)—

"(1) the directors of the depository institution may continue to be directors of the national bank until others are elected or appointed in accordance with applicable Federal law;

"(2) the directors of the institution may execute the articles of association and organization certificate by a majority of the directors of the depository institution, and such certificate shall declare that the owners of 51 percent of the capital stock or 51 percent of the total outstanding votes, as the case may be, have authorized the directors to make such certificate and to convert the depository institution into a national bank; and

"(3) a majority of the directors, after executing the articles of association and the organization certificate, shall have power to execute all other papers and to do whatever may be required to make its organization perfect and complete as a national bank.

"(c) SHARE AMOUNTS AFTER CONVERSION.—The shares of a depository institution that converts to a national bank in accordance with this section may continue to be for the same amount each as they were before the conversion.

"(d) STOCKHOLDER AND EMPLOYEE RIGHTS.—When the Commission has given to a converting depository institution a certificate that the provisions of this title have been complied with, the converted depository institution, and all of its stockholders, officers, and employees shall have the same powers and privileges, and shall be subject to the same duties, liabilities, and regulations, in all respects, as have been prescribed under Federal law for institutions originally organized as national banks.

"(e) RETENTION OF ASSETS.—The Commission may, in its discretion and subject to such conditions as it may prescribe, permit a depository institution that converts to a national bank under this section to retain and carry, at a value determined by the Commission, such of the assets of the converting depository institution that do not conform to the legal requirements relative to assets acquired and held by national banks.

"(f) INCLUSION OF 'NATIONAL' IN INSTITUTION'S NAME.—The name of an institution resulting from a conversion under this section shall include the word 'national'.".

(b) AMENDMENT TO THE HOME OWNERS' LOAN ACT.—Section 5(i) of the Home Owners' Loan Act (12 U.S.C. 1464(i)) is amended—

(1) by redesignating paragraph (4) as paragraph (8); and

(2) by inserting after paragraph (3) the following new paragraphs:

"(4) CONVERSION OF FEDERAL OR STATE SAVINGS ASSOCIATION TO NATIONAL BANK.—

"(A) IN GENERAL.—A Federal savings association or a State savings association may convert into a national bank if such conversion—

"(i) is agreed to by a vote of members or security holders, in person or by proxy, at a special meeting called to consider such action, as specified by section 5154 of the Revised Statutes; and

"(ii) complies in all other respects with the requirements of section 5154 of the Revised Statutes and any regulations issued thereunder.

"(B) NOTICE.—Notice of the meeting referred to in subparagraph (A)(i) shall be given in accordance with paragraph (3)(A)(iii).

"(C) EFFECTIVE DATE.—A conversion under this paragraph shall be effective on the date that all the provisions of this Act and section 5154 of the Revised Statutes are fully complied with, and upon the issuance of a certificate of authority to commence banking by the Comptroller of the Currency in accordance with section 5169 of the Revised Statutes.

"(D) REGULATORY AUTHORITY.—The Comptroller of the Currency may prescribe such rules or regulations applicable to a national bank that results from the conversion of a Federal savings association or a State savings association under this paragraph, including any requirement that the resulting national bank assume and maintain any liquidation account obligations of the converting institution, that the Comptroller of the Currency determines to be appropriate.

"(E) APPROVAL REQUIREMENTS.—

"(i) IN GENERAL.—Except as provided in clauses (ii) and (iii), no approval is required under this section for the conversion of any savings association into a national bank, other than the approval of the Comptroller of the Currency, as prescribed by section 5154 of the Revised Statutes.

"(ii) EXCEPTION.—If a mutual savings association converts into a national bank, approval by the Comptroller of the Currency shall be required for that aspect of the conversion which relates to the conversion of the institution to the stock form of ownership.

"(iii) STATE SAVINGS ASSOCIATION CONVERSIONS.—Approval of a State savings association conversion to a national bank under this paragraph, shall be subject to any applicable laws of the State in which the home office of the State savings association is located.

"(5) CONVERSION OF FEDERAL SAVINGS ASSOCIATION TO STATE BANK.—

"(A) IN GENERAL.—A Federal savings association may convert into a State bank organized pursuant to the laws of the State in which the home office of such Federal savings association is located if—

"(i) the State permits the conversion of a Federal savings association into a State bank; and

"(ii) such conversion—

"(I) is determined upon the vote in favor of such conversion cast in person or by proxy at a special meeting of members or stockholders called to consider such action, as specified by the law of the State in which the home office of the Federal savings association is located, and

"(II) complies in all other respects with the requirements of such State law for the conversion of a Federal savings association into a State bank.

"(B) NOTICE.—Notice of the meeting referred to in subparagraph (A)(i) shall be given in accordance with paragraph (3)(A)(iii).

"(C) EFFECTIVE DATE.—A conversion under this paragraph shall be effective upon the date that all the provisions of this Act shall have been fully complied with, and upon the issuance of a new charter by the State in which the savings association is located.

"(D) REGULATORY AUTHORITY.—The appropriate State regulatory authority may prescribe such rules or regulations applicable to a bank that results from the conversion of a Federal savings association, including any requirement that the resulting bank assume and maintain any liquidation account obligations of the converting institution, that such regulatory authority determines to be appropriate.

"(E) APPROVAL REQUIREMENTS.—

"(i) IN GENERAL.—Except as provided in clause (ii), no approval shall be required for the conversion of any Federal savings association into a State bank other than the approval of the appropriate State regulatory authority of the State in which the home office of the Federal savings association is located.

"(ii) EXCEPTION.—If a Federal mutual savings association converts into a State bank, approval by the Office of Thrift Supervision shall be required for that aspect of the conversion which relates to the conversion of the institution to the stock form of ownership.

"(6) CONVERSIONS BY STATE SAVINGS ASSOCIATIONS TO STATE BANKS.—

"(A) NO APPROVAL FOR CONVERSION.—Except as provided in subparagraph (B), no approval shall be required under this subsection for the conversion of a State savings association, as defined in section 3(b)(3) of the Federal Deposit Insurance Act, into a State bank other than the approval of the appropriate State regulatory authority of the State in which the home office of the State savings association is located.

"(B) CONVERSION TO STOCK FORM OF OWNERSHIP.—If a State mutual savings association converts to a State bank under this paragraph, approval by the Comptroller of the Currency shall be required for that aspect of the conversion which relates to the conversion of the institution to the stock form of ownership.

"(7) DEFINITION OF STATE BANK.—For purposes of paragraphs (5) and (6), the term 'State bank' shall have the same meaning as in section 3(a)(2) of the Federal Deposit Insurance Act, exclusive of a savings bank.".

SEC. 803. RETENTION OF EXISTING IN-STATE BRANCHES BY SAVINGS ASSOCIATIONS THAT CONVERT TO NATIONAL BANKS.

Section 5155(b) of the Revised Statutes (12 U.S.C. 36(b)) is amended—

(1) by redesignating paragraph (2) as paragraph (4); and

(2) by inserting after paragraph (1) the following:

"(2) A national bank resulting from the conversion of a Federal or State savings association (as such terms are defined in section 3 of the Federal Deposit Insurance Act) may retain and operate as a branch any office that was a branch of the savings association immediately prior to conversion if such office—

"(A) is located in the same State in which the national bank has its main office; and

"(B) was lawfully and continuously operated by the savings association as a branch for a period of not less than 2 years prior to such conversion.

"(3) Notwithstanding paragraph (2), a national bank resulting from the conversion of a Federal or State savings association that was, prior to such conversion, a subsidiary of a bank holding company (as defined in section 2 of the Bank Holding Company Act of 1956), may not retain and operate as a branch any office that would otherwise not be permitted for a national bank.".

SEC. 804. NO RECAPTURE OF THRIFT RESERVES ON CONVERSION.

(a) IN GENERAL.—It is the sense of the Congress that it would be in the public interest to enact legislation as follows: Notwithstanding any other provision of law to the contrary, a domestic building and loan association, mutual savings bank, or cooperative bank to which section 593 of the Internal Revenue Code of 1986 applies which becomes a bank within the meaning of section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) and continues to meet the requirements of section 7701(a)(19)(C) of the Internal Revenue Code of 1986 shall not be required to treat as income for Federal income tax purposes any amounts previously deducted by such institutions under section 593 of such Code because it ceases to meet any other requirement of section 7701(a)(19) of such Code.

(b) Conforming Tax Legislation.—Not later than 90 days after the date of enactment of this Act, the Secretary of the Treasury shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, a draft of amendments to the Internal Revenue Code of 1986 necessary to reflect the provisions of subsection (a).

TITLE IX—FINANCIAL INSTITUTIONS ENFORCEMENT IMPROVEMENTS ACT

SEC. 901. SHORT TITLE.

This title may be cited as the "Financial Institutions Enforcement Improvements Act".

Subtitle A—Termination of Charters, Insurance, and Offices

SEC. 911. REVOKING CHARTER OF FEDERAL DEPOSITORY INSTITUTIONS CONVICTED OF MONEY LAUNDERING OR CASH TRANSACTION REPORTING OFFENSES.

(a) National Banks.—Section 5239 of the Revised Statutes (12 U.S.C. 93) is amended by adding at the end the following:

"(c) Forfeiture of Franchise for Money Laundering or Cash Transaction Reporting Offenses.—

"(1) In general.—

"(A)(i) Conviction of title 18 offenses.—If a national bank has been convicted of any criminal offense described in section 1956 or 1957 of title 18, United States Code, the Attorney General shall provide to the Office of the Comptroller of the Currency a written notification of the conviction and shall include a certified copy of the order of conviction from the court rendering the decision.

"(ii) Notice of termination; pretermination hearing.—After receiving written notification from the Attorney General of such a conviction, the Office of the Comptroller of the Currency shall issue to the national bank a notice of the Comptroller's intention to terminate all rights, privileges, and franchises of the bank and schedule a pretermination hearing.

"(B) Conviction of title 31 offenses.—If a national bank is convicted of any offense punishable under section 5322 of title 31, United States Code, after receiving written notification from the Attorney General, the Office of the Comptroller of the Currency may issue to the national bank a notice of the Comptroller's intention to terminate all rights, privileges, and franchises of the bank and schedule a pretermination hearing.

"(C) Judicial review.—Section 8(h) of the Federal Deposit Insurance Act shall apply to any proceeding under this subsection.

"(2) Factors to be considered.—In determining whether a franchise shall be forfeited under paragraph (1), the Comptroller of the Currency shall consider—

"(A) the degree to which senior management officials knew of, or were involved in, the solicitation of illegally derived funds or the money laundering operation;

"(B) whether the interest of the local community in adequate depository and credit services would be threatened by the forfeiture of the franchise;

"(C) whether the bank has fully cooperated with law enforcement authorities with respect to the conviction;

"(D) whether there will be any losses to any Federal deposit insurance fund or the Resolution Trust Corporation; and

"(E) whether the bank maintained at the time of the conviction, according to the review of the Comptroller of the Currency, a program of money laundering deterrence and compliance that clearly exceeded federally required deterrence and compliance measures; adequately monitored the activities of its officers, employees, and agents to ensure compliance; and promptly reported suspected violations to law enforcement authorities.

"(3) Successor liability.—This subsection does not apply to a successor to the interests of, or a person who acquires, a bank that violated a provision of law described in paragraph (1), if the successor succeeds to the interests of the violator, or the acquisition is made, in good faith and not for purposes of evading this subsection or regulations prescribed under this subsection.

"(4) Definition.—For purposes of this subsection, the term 'senior management officials' means those individuals who exercise major supervisory control within a national bank, including members of the board of directors and individuals who own or control 10 percent or more of the outstanding voting stock of the bank or its holding company. If the institution is a Federal branch of a foreign institution, the term 'senior management officials' means those individuals who exercise major supervisory control within any branch of that foreign institution located within the United States. The Comptroller of the Currency shall by regulation specify which officials of a national bank shall be treated as senior management officials for the purpose of this subsection.".

(b) Federal Savings Associations.—Section 5 of the Home Owners' Loan Act (12 U.S.C. 1464) is amended by adding at the end the following:

"(w) Forfeiture of Franchise for Money Laundering or Cash Transaction Reporting Offenses.—

"(1) In general.—

"(A)(i) Conviction of title 18 offenses.—If a Federal savings association has been convicted of any criminal offense described in section 1956 or 1957 of title 18, United

States Code, the Attorney General shall provide to the Director of the Office of Thrift Supervision a written notification of the conviction and shall include a certified copy of the order of conviction from the court rendering the decision.

"(ii) NOTICE OF TERMINATION; PRETERMINATION HEARING.—After receiving written notification from the Attorney General of such a conviction, the Director of the Office of Thrift Supervision shall issue to the savings association a notice of the Director's intention to terminate all rights, privileges, and franchises of the savings association and schedule a pretermination hearing.

"(B) CONVICTION OF TITLE 31 OFFENSES.—If a Federal savings association is convicted of any offense punishable under section 5322 of title 31, United States Code, after receiving written notification from the Attorney General, the Director of the Office of Thrift Supervision may issue to the savings association a notice of the Director's intention to terminate all rights, privileges, and franchises of the savings association and schedule a pretermination hearing.

"(C) JUDICIAL REVIEW.—Subsection (d)(1)(B)(vii) shall apply to any proceeding under this subsection.

"(2) FACTORS TO BE CONSIDERED.—In determining whether a franchise shall be forfeited under paragraph (1), the Office of Thrift Supervision shall consider—

"(A) the degree to which senior management officials knew of, or were involved in, the solicitation of illegally derived funds or the money laundering operation;

"(B) whether the interest of the local community in adequate depository and credit services would be threatened by the forfeiture of the franchise;

"(C) whether the association has fully cooperated with law enforcement authorities with respect to the conviction;

"(D) whether there will be any losses to any Federal deposit insurance fund or the Resolution Trust Corporation; and

"(E) whether the association maintained at the time of the conviction, according to the review of the Director of the Office of Thrift Supervision, a program of money laundering deterrence and compliance that clearly exceeded federally required deterrence and compliance measures; adequately monitored the activities of its officers, employees, and agents to ensure compliance; and promptly reported suspected violations to law enforcement authorities.

"(3) SUCCESSOR LIABILITY.—This subsection does not apply to a successor to the interests of, or a person who acquires, a savings association that violated a provision of law described in paragraph (1), if the successor succeeds to the interests of the violator, or the acquisition is made, in good faith and not for purposes of evading this subsection or regulations prescribed under this subsection.

"(4) DEFINITION.—For purposes of this subsection, the term 'senior management officials' means those individuals who exercise major supervisory control within a savings association, including members of the board of directors and individuals who own or control 10 percent or more of the outstanding voting stock of the savings association or its holding company. If the savings association is a United States branch of a foreign institution, the term 'senior management officials' means those individuals who exercise major supervisory control within any branch of that foreign institution located within the United States. The Office of Thrift Supervision shall by regulation specify which officials of a savings association shall be treated as senior management officials for the purpose of this subsection.".

(c) FEDERAL CREDIT UNIONS.—Title I of the Federal Credit Union Act (12 U.S.C. 1752 et seq.) is amended by adding at the end the following new section:

"SEC. 131. FORFEITURE OF ORGANIZATION CERTIFICATE FOR MONEY LAUNDERING OR CASH TRANSACTION REPORTING OFFENSES.

"(a) FORFEITURE OF FRANCHISE FOR MONEY LAUNDERING OR CASH TRANSACTION REPORTING OFFENSES.—

"(1)(A) CONVICTION OF TITLE 18 OFFENSES.—If a credit union has been convicted of any criminal offense described in section 1956 or 1957 of title 18, United States Code, the Attorney General shall provide to the Board a written notification of the conviction and shall include a certified copy of the order of conviction from the court rendering the decision.

"(B) NOTICE OF TERMINATION; PRETERMINATION HEARING.—After receiving written notification from the Attorney General of such a conviction, the Board shall issue to such credit union a notice of its intention to terminate all rights, privileges, and franchises of the credit union and schedule a pretermination hearing.

"(2) CONVICTION OF TITLE 31 OFFENSES.—If a credit union is convicted of any offense punishable under section 5322 of title 31, United States Code, after receiving written notification from the Attorney General, the Board may issue to such credit union a notice of its intention to terminate all rights, privileges, and franchises of the credit union and schedule a pretermination hearing.

"(3) JUDICIAL REVIEW.—Section 206(j) shall apply to any proceeding under this section.

"(b) FACTORS TO BE CONSIDERED.—In determining whether a franchise shall be forfeited under subsection (a), the Board shall consider—

"(1) the degree to which senior management officials knew of, or were involved in, the solicitation of illegally derived funds or the money laundering operation;

"(2) whether the interest of the local community in adequate depository and credit services would be threatened by the forfeiture of the franchise;

"(3) whether the credit union has fully cooperated with law enforcement authorities with respect to the conviction;

"(4) whether there will be any losses to the credit union share insurance fund; and

"(5) whether the credit union maintained at the time of the conviction, according to the review of the Board, a program of money laundering deterrence and compliance that clearly exceeded federally required deterrence and compliance measures; adequately monitored the activities of its officers, employees, and agents to ensure compliance; and promptly reported suspected violations to law enforcement authorities.

"(c) SUCCESSOR LIABILITY.—This section does not apply to a successor to the interests of, or a person who acquires, a credit union that violated a provision of law described in subsection (a), if the successor succeeds to the interests of the violator, or the acquisition is made, in good faith and not for purposes of evading this section or regulations prescribed under this section.

"(d) DEFINITION.—For purposes of this section, the term 'senior management officials' means those individuals who exercise major supervisory control within a credit union, including members of the board of directors. The Board shall by regulation specify which officials of a credit union shall be treated as senior management officials for the purpose of this section.".

SEC. 912. TERMINATING INSURANCE OF STATE DEPOSITORY INSTITUTIONS CONVICTED OF MONEY LAUNDERING OR CASH TRANSACTION REPORTING OFFENSES.

(a) STATE BANKS AND SAVINGS ASSOCIATIONS.—

(1) IN GENERAL.—Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) is amended by adding at the end the following new subsection:

"(v) TERMINATION OF INSURANCE FOR MONEY LAUNDERING OR CASH TRANSACTION REPORTING OFFENSES.—

"(1) IN GENERAL.—

"(A)(i) CONVICTION OF TITLE 18 OFFENSES.—If an insured State depository institution, including a State branch of a foreign institution, has been convicted of any criminal offense described in section 1956 or 1957 of title 18, United States Code, the Attorney General shall provide to the Corporation a written notification of the conviction and shall include a certified copy of the order of conviction from the court rendering the decision.

"(ii) NOTICE OF TERMINATION; TERMINATION HEARING.—After receipt of written notification from the Attorney General by the Corporation of such a conviction, the Board of Directors shall issue to the insured depository institution a notice of its intention to terminate the insured status of the insured depository institution and schedule a hearing on the matter, which shall be conducted in all respects as a termination hearing pursuant to paragraphs (3) through (5) of subsection (a).

"(B) CONVICTION OF TITLE 31 OFFENSES.—If an insured State depository institution, including a State branch of a foreign institution, is convicted of any offense punishable under section 5322 of title 31, United States Code, after receipt of written notification from the Attorney General by the Corporation, the Board of Directors may initiate proceedings to terminate the insured status of the insured depository institution in the manner described in subparagraph (A).

"(C) NOTICE TO STATE SUPERVISOR.—The Corporation shall simultaneously transmit a copy of any notice issued under this paragraph to the appropriate State financial institutions supervisor.

"(2) FACTORS TO BE CONSIDERED.—In determining whether to terminate insurance under paragraph (1), the Board of Directors shall consider—

"(A) the degree to which senior management officials knew of, or were involved in, the solicitation of illegally derived funds or the money laundering operation;

"(B) whether the interest of the local community in adequate depository and credit services would be threatened by the forfeiture of the franchise;

"(C) whether the institution has fully cooperated with law enforcement authorities with respect to the conviction;

"(D) whether there will be any losses to the Federal deposit insurance funds or the Resolution Trust Corporation; and

"(E) whether the institution maintained at the time of the conviction, according to the review of the Corporation, a program of money laundering deterrence and compliance that clearly exceeded federally required deterrence and compliance measures; adequately monitored the activities of its officers, employees, and agents to ensure compliance; and promptly reported suspected violations to law enforcement authorities.

"(3) NOTICE TO STATE BANKING SUPERVISOR AND PUBLIC.—When the order to terminate insured status initiated pursuant to this subsection is final, the Board of Directors shall—

"(A) notify the State banking supervisor of any State depository institution described in paragraph (1) and the Office of the Comptroller of the Currency or the Office of Thrift Supervision, where appropriate, at least 10 days prior to the effective date of the order of termination of the insured status of such depository institution, including a State branch of a foreign bank; and

"(B) publish notice of the termination of the insured status of the depository institution in the Federal Register.

"(4) DEPOSITS UNINSURED.—Upon termination of the insured status of any State depository institution pursuant to paragraph (1), the deposits of such depository institution shall be treated in accordance with section 8(a)(7).

"(5) SUCCESSOR LIABILITY.—This subsection does not apply to a successor to the interests of, or a person who acquires, an insured depository institution that violated a provision of law described in paragraph (1), if the successor succeeds to the interests of the violator, or the acquisition is made, in good faith and not for purposes of evading this subsection or regulations prescribed under this subsection.

"(6) DEFINITION.—For purposes of this subsection, the term 'senior management officials' means those individuals who exercise major supervisory control within an insured depository institution, including members of the board of directors and individuals who own or control 10 percent or more of the outstanding voting stock of such institution or its holding company. If the institution is a State branch of a foreign institution, the term 'senior management officials' means those individuals who exercise major supervisory control within any branch of that foreign institution located within the United States. The Board of Directors shall by regulation specify which officials of an insured State depository institution shall be treated as senior management officials for the purpose of this subsection.".

(2) TECHNICAL AMENDMENT.—Section 8(a)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1818(a)(3)) is amended by inserting "of this subsection or subsection (v)" after "subparagraph (B)".

(b) STATE CREDIT UNIONS.—Section 206 of the Federal Credit Union Act (12 U.S.C. 1786) is amended by adding at the end the following new subsection:

"(u) TERMINATION OF INSURANCE FOR MONEY LAUNDERING OR CASH TRANSACTION REPORTING OFFENSES.—

"(1) IN GENERAL.—(A)(i) If an insured State credit union has been convicted of any criminal offense described in section 1956 or 1957 of title 18, United States Code, the Attorney General shall provide to the Board a written notification of the conviction and shall include a certified copy of the order of conviction from the court rendering the decision.

"(ii) After written notification from the Attorney General to the Board of Directors of such a conviction, the Board shall issue to such insured credit union a notice of its intention to terminate the insured status of the insured credit union and schedule a hearing on the matter, which shall be conducted as a termination hearing pursuant to subsection (b) of this section, except that no period for correction shall apply to a notice issued under this subparagraph.

"(B) If a credit union is convicted of any offense punishable under section 5322 of title 31, United States Code, after prior written notification from the Attorney General, the Board may initiate proceedings to terminate the insured status of such credit union in the manner described in subparagraph (A).

"(C) The Board shall simultaneously transmit a copy of any notice under this paragraph to the appropriate State financial institutions supervisor.

"(2) FACTORS TO BE CONSIDERED.—In determining whether to terminate insurance under paragraph (1), the Board shall consider—

"(A) the degree to which senior management officials knew of, or were involved in, the solicitation of illegally derived funds or the money laundering operation;

"(B) whether the interest of the local community in adequate depository and credit services would be threatened by the forfeiture of the franchise;

"(C) whether the credit union has fully cooperated with law enforcement authorities with respect to the conviction;

"(D) whether there will be any losses to the credit union share insurance fund; and

"(E) whether the credit union maintained at the time of the conviction, according to the review of the Board, a program of money laundering deterrence and compliance that clearly exceeded federally required deterrence and compliance measures; adequately monitored the activities of its officers, employees, and agents to ensure compliance; and promptly reported suspected violations to law enforcement authorities.

"(3) NOTICE TO STATE CREDIT UNION SUPERVISOR AND PUBLIC.—When the order to terminate insured status initiated pursuant to this subsection is final, the Board shall—

"(A) notify the commission, board, or authority (if any) having supervision of the credit union described in paragraph (1) at least 10 days prior to the effective date of the order of the termination of the insured status of such credit union; and

"(B) publish notice of the termination of the insured status of the credit union.

"(4) DEPOSITS UNINSURED.—Upon termination of the insured status of any State credit union pursuant to paragraph (1), the deposits of such credit union shall be treated in accordance with section 206(d)(2).

"(5) SUCCESSOR LIABILITY.—This subsection does not apply to a successor to the interests of, or a person who acquires, an insured credit union that violated a provision of law described in paragraph (1), if the successor succeeds to the interests of the violator, or the acquisition is made, in good faith and not for purposes of evading this subsection or regulations prescribed under this subsection.

"(6) DEFINITION.—For purposes of this subsection, the term 'senior management officials' means those individuals who exercise major supervisory control within an insured credit union, including members of the board of directors. The Board shall by regulation specify which officials of an insured State credit union shall be treated as senior management officials for the purpose of this subsection.".

SEC. 913. REMOVING PARTIES INVOLVED IN CURRENCY REPORTING VIOLATIONS.

(a) FDIC-INSURED INSTITUTIONS.—

(1) VIOLATION OF REPORTING REQUIREMENTS.—Section 8(e)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1818(e)(2)) is amended to read as follows:

"(2) SPECIFIC VIOLATIONS.—Whenever the appropriate Federal banking agency determines that—

"(A) an institution-affiliated party committed a violation of any provision of subchapter II of chapter 53 of title 31, United States Code, unless such violation was inadvertent or unintentional;

"(B) an officer or director of an insured depository institution knew that an institution-affiliated party of the insured depository institution violated any such provision or any provision of law referred to in subsection (g)(1)(A)(ii); or

"(C) an officer or director of an insured depository institution committed any violation of the Depository Institution Management Interlocks Act,

the agency may serve upon such party, officer, or director a written notice of its intention to remove such party from office. In determining whether an officer or director should be removed as a result of the application of subparagraph (B), the agency shall consider whether the officer or director took appropriate action to stop, or to prevent the recurrence of, a violation described in such subparagraph.".

(2) FELONY CHARGES.—Section 8(g)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1818(g)(1)) is amended to read as follows:

"(1)(A) Whenever any institution-affiliated party is charged in any information, indictment, or complaint, with the commission of or participation in—

"(i) a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding one year under State or Federal law, or

"(ii) a criminal violation of section 1956 or 1957 of title 18, United States Code, or an offense punishable under section 5322 of title 31, United States Code,

the appropriate Federal banking agency may, if continued service or participation by such party may pose a threat to the interests of the depository institution's depositors or may threaten to impair public confidence in the depository institution, by written notice served upon such party, suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of the depository institution. A copy of such notice shall also be served upon the depository institution.

"(B) A suspension or prohibition under subparagraph (A) shall remain in effect until such information, indictment, or complaint is finally disposed of or until terminated by the agency.

"(C)(i) In the event that a judgment of conviction or an agreement to enter a pretrial diversion or other similar program is entered against such party in connection with a crime described in subparagraph (A)(i), and at such time as such judgment is not subject to further appellate review, the agency may, if continued service or participation by such party may pose a threat to the interests of the depository institution's depositors or may threaten to impair public confidence in the depository institution, issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the depository institution except with the consent of the appropriate agency.

"(ii) In the event of such a judgment of conviction or agreement in connection with a violation described in subparagraph (A)(ii), the agency shall issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the depository institution except with the consent of the appropriate agency.

"(D) A copy of such order shall also be served upon such depository institution, whereupon such party (if a director or an officer) shall cease to be a director or officer of such depository institution. A finding of not guilty or other disposition of the charge shall not preclude the agency from thereafter instituting proceedings to remove such party from office or to prohibit further participation in depository institution affairs, pursuant to paragraph (1), (2), or (3) of subsection (e) of this section. Any notice of suspension or order of removal issued under this paragraph shall remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (3) unless terminated by the agency.".

(b) Credit Unions.—

(1) Violation of reporting requirements.—Section 206(g)(2) of the Federal Credit Union Act (12 U.S.C. 1786(g)(2)) is amended to read as follows:

"(2) Specific violations.—Whenever the Board determines that—

"(A) an institution-affiliated party committed a violation of any provision of subchapter II of chapter 53 of title 31, United States Code, unless such violation was inadvertent or unintentional;

"(B) an officer or director of an insured credit union knew that an institution-affiliated party of the insured credit union violated any such provision or any provision of law referred to in subsection (i)(1)(A)(ii); or

"(C) an officer or director of an insured credit union committed any violation of the Depository Institution Management Interlocks Act,

the Board may serve upon such party, officer, or director a written notice of its intention to remove him from office. In determining whether an officer or director should be removed as a result of the application of subparagraph (B), the Board shall consider whether the officer or director took appropriate action to stop, or to prevent the recurrence of, a violation described in such subparagraph.".

(2) Felony charges.—Section 206(i)(1) of the Federal Credit Union Act (12 U.S.C. 1786(i)(1)) is amended to read as follows:

"(1)(A) Whenever any institution-affiliated party is charged in any information, indictment, or complaint, with the commission of or participation in—

"(i) a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding one year under State or Federal law, or

"(ii) a criminal violation of section 1956 or 1957 of title 18, United States Code, or an offense punishable under section 5322 of title 31, United States Code,

the Board may, if continued service or participation by such party may pose a threat to the interests of the credit union's members or may threaten to impair public confidence in the credit union, by written notice served upon such party, suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of the credit union. A copy of such notice shall also be served upon the credit union.

"(B) A suspension or prohibition under subparagraph (A) shall remain in effect until such information, indictment, or complaint is finally disposed of or until terminated by the Board.

"(C)(i) In the event that a judgment of conviction or an agreement to enter a pretrial diversion or other similar program is entered against such party in connection with a crime described in subparagraph (A)(i), and at such time as such judgment is not subject to further appellate review, the Board may, if continued service or participation by such party may pose a threat to the interests of the credit union's members or may threaten to impair public confidence in the credit union, issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the credit union except with the consent of the Board.

"(ii) In the event of such a judgment of conviction or agreement in connection with a violation described in subparagraph (A)(ii), the Board shall issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the credit union except with the consent of the Board.

"(D) A copy of such order shall also be served upon such credit union, whereupon such party (if a director or an officer) shall cease to be a director or officer of such credit union. A finding of not guilty or other disposition of the charge shall not preclude the Board from thereafter instituting proceedings to remove such party from office or to prohibit further participation in credit union affairs, pursuant to paragraph (1), (2), or (3) of subsection (g) of this section. Any notice of suspension or order of removal issued under this paragraph shall remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (3) unless terminated by the Board.".

SEC. 914. UNAUTHORIZED PARTICIPATION.

Section 19(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1829(a)(1)) is amended by inserting "or money laundering" after "breach of trust".

SEC. 915. ACCESS BY STATE FINANCIAL INSTITUTION SUPERVISORS TO CURRENCY TRANSACTIONS REPORTS.

Section 5319 of title 31, United States Code, is amended—

(1) in the first sentence, by striking "to an agency" and inserting "to an agency, including any State financial institutions supervisory agency,"; and

(2) by inserting after the second sentence the following new sentence: "The Secretary may only require reports on the use of such information by any State financial institutions supervisory agency for other than supervisory purposes.".

SEC. 916. RESTRICTING STATE BRANCHES AND AGENCIES OF FOREIGN BANKS CONVICTED OF MONEY LAUNDERING OFFENSES.

Section 7(d) of the International Banking Act of 1978 (12 U.S.C. 3105(d)) is amended to read as follows:

"(d) PROCEEDINGS RELATED TO CONVICTION FOR MONEY LAUNDERING OFFENSES.—

"(1) NOTICE OF INTENTION TO ISSUE ORDER.—If the Board finds or receives written notice from the Attorney General that—

"(A) any foreign bank which operates a State agency, a State branch which is not an insured branch, or a State commercial lending company subsidiary,

"(B) any State agency,

"(C) any State branch which is not an insured branch,

"(D) any State commercial lending subsidiary, or

"(E) any director or senior executive officer of any such foreign bank, agency, branch, or subsidiary,

has been found guilty of any money laundering offense, the Board shall issue a notice to the agency, branch, or subsidiary of the Board's intention to commence a termination proceeding under subsection (e).

"(2) DEFINITIONS.—For purposes of this subsection—

"(A) INSURED BRANCH.—The term 'insured branch' has the meaning given such term in section 3(s) of the Federal Deposit Insurance Act.

"(B) MONEY LAUNDERING OFFENSE DEFINED.—The term 'money laundering offense' means any offense under section 1956, 1957, or 1960 of title 18, United States Code, or section 5322 of title 31, United States Code.

"(C) SENIOR EXECUTIVE OFFICERS.—The term 'senior executive officers' has the meaning given to such term by the Board pursuant to section 32(f) of the Federal Deposit Insurance Act.".

Subtitle B—Nonbank Financial Institutions and General Provisions

SEC. 921. IDENTIFICATION OF FINANCIAL INSTITUTIONS.

(a) IN GENERAL.—Chapter 53 of title 31, United States Code, is amended by inserting after section 5326 the following:

"§ 5327. Identification of financial institutions

"By January 1, 1992, the Secretary shall prescribe regulations providing that each depository institution identify its customers which are financial institutions as defined in subparagraphs (H) through (Y) of section 5312(a)(2) and the regulations thereunder and which hold accounts with the depository institution. Each depository institution shall report the names of and other information about these financial institution customers to the Secretary at such times and in such manner as the Secretary shall prescribe by regulation. No person shall cause or attempt to cause a depository institution not to file a report required by this section or to file a report containing a material omission or misstatement of fact. The

Secretary shall provide these reports to appropriate State financial institution supervisory agencies for supervisory purposes.".

(b) CIVIL PENALTY.—Section 5321(a) of title 31, United States Code, is amended by adding at the end the following paragraph:

"(7)(A) The Secretary may impose a civil penalty on any person or depository institution, within the meaning of section 5327, that willfully violates any provision of section 5327 or a regulation prescribed thereunder.

"(B) The amount of any civil money penalty imposed under subparagraph (A) shall not exceed $10,000 for each day a report is not filed or a report containing a material omission or misstatement of fact remains on file with the Secretary.".

(c) CHAPTER ANALYSIS.—The chapter analysis for chapter 53 of title 31, United States Code, is amended by adding at the end the following new item:

"5327. Identification of financial institutions.".

SEC. 922. PROHIBITION OF ILLEGAL MONEY TRANSMITTING BUSINESSES.

(a) IN GENERAL.—Chapter 95 of title 18, United States Code, is amended by adding at the end the following section:

"§ 1960. Prohibition of illegal money transmitting businesses

"(a) Whoever conducts, controls, manages, supervises, directs, or owns all or part of a business, knowing the business is an illegal money transmitting business, shall be fined in accordance with this title or imprisoned not more than 5 years, or both.

"(b) Any property, including money, used in violation of the provisions of this section may be seized and forfeited to the United States. All provisions of law relating to—

"(1) the seizure, summary, and judicial forfeiture procedures, and condemnation of vessels, vehicles, merchandise, and baggage for violation of the customs laws;

"(2) the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from such sale;

"(3) the remission or mitigation of such forfeitures; and

"(4) the compromise of claims and the award of compensation to informers with respect to such forfeitures;

shall apply to seizures and forfeitures incurred or alleged to have been incurred under the provisions of this section, insofar as applicable and not inconsistent with such provisions. Such duties as are imposed upon the collector of customs or any other person with respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws shall be performed with respect to seizures and forfeitures of property used or intended for use in violation of this section by such officers, agents, or other persons as may be designated for that purpose by the Attorney General.

"(c) As used in this section—

"(1) the term 'illegal money transmitting business' means a money transmitting business that affects interstate or foreign commerce in any manner or degree and which is knowingly operated in a State—

"(A) without the appropriate money transmitting State license; and

"(B) where such operation is punishable as a misdemeanor or a felony under State law;

"(2) the term 'money transmitting' includes but is not limited to transferring funds on behalf of the public by any and all means including but not limited to transfers within this country or to locations abroad by wire, check, draft, facsimile, or courier; and

"(3) the term 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.".

(b) CHAPTER ANALYSIS.—The chapter analysis for chapter 95 of title 18, United States Code, is amended by adding at the end the following item:

"1960. Prohibition of illegal money transmitting businesses.".

SEC. 923. COMPLIANCE PROCEDURES.

Section 5318(a)(2) of title 31, United States Code, is amended by inserting "or to guard against money laundering" before the semicolon.

SEC. 924. NONDISCLOSURE OF ORDERS.

Section 5326 of title 31, United States Code, is amended by adding at the end the following:

"(c) NONDISCLOSURE OF ORDERS.—No financial institution or officer, director, employee or agent of a financial institution subject to an order under this section may disclose the existence of, or terms of, the order to any person except as prescribed by the Secretary.".

SEC. 925. IMPROVED RECORDKEEPING WITH RESPECT TO CERTAIN INTERNATIONAL FUNDS TRANSFERS.

(a) IN GENERAL.—Section 21(b) of the Federal Deposit Insurance Act (12 U.S.C. 1829b(b)) is amended—

(1) by striking "(b) Where" and inserting "(b)(1) Where"; and

(2) by adding at the end the following paragraph:

"(2) TRANSFERS OF FUNDS.—

"(A) IN GENERAL.—Before October 1, 1991, the Secretary and the Board of Governors of the Federal Reserve System (hereafter in this section referred to as the 'Board') in consultation with State banking departments shall jointly prescribe such final regulations as may be appropriate to require insured depository institutions, businesses that provide check cashing services, money transmitting businesses, and businesses that issue or redeem money orders, travelers' checks, or other similar instruments to maintain records of payment orders which—

"(i) involve international transactions; and

"(ii) direct transfers of funds over wholesale funds transfer systems or on the books of any insured depository institution, or on the books of any business that provides check cashing services, any money transmitting business, and any business that issues or redeems money orders, travelers' checks, or similar instruments;

that will have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

"(B) Factors for consideration.—In prescribing the regulations required under subparagraph (A), the Secretary and the Board shall consider—

"(i) the usefulness in criminal, tax, or regulatory investigations or proceedings of any record required to be maintained pursuant to the proposed regulations; and

"(ii) the effect the recordkeeping required pursuant to such proposed regulations will have on the cost and efficiency of the payment system.

"(C) Availability of records.—Any records required to be maintained pursuant to the regulations prescribed under subparagraph (A) shall be submitted or made available to the Secretary upon request.".

(b) Conforming Amendments.—Section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b) is amended—

(1) in the first sentence of subsection (c), by striking "the Secretary shall" and inserting "the regulations prescribed under subsection (b) shall";

(2) in subsection (d), by striking "regulations of the Secretary" and inserting "regulations issued under subsection (b)";

(3) in subsection (e), by striking "Secretary may prescribe" and inserting "regulations issued under subsection (b) may require";

(4) in subsection (f), by striking "Secretary may prescribe" and inserting "regulations issued under subsection (b) may require"; and

(5) in subsection (g), by striking "Secretary may prescribe" and inserting "regulations issued under subsection (b) may require".

SEC. 926. USE OF CERTAIN RECORDS.

Section 1112(f) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3412(f)) is amended—

(1) in paragraph (1), by inserting "or the Secretary of the Treasury" after "the Attorney General"; and

(2) in paragraph (2), by inserting "and only for criminal investigative or prosecutive purposes relating to money laundering by the Department of the Treasury" after "the Department of Justice".

SEC. 927. SUSPICIOUS TRANSACTIONS AND FINANCIAL INSTITUTION ANTI-MONEY LAUNDERING PROGRAMS.

(a) Reporting Requirement.—Section 5324 of title 31, United States Code, is amended by inserting "or section 5325 or the regulations thereunder" after "section 5313(a)" each place it appears.

(b) Suspicious Transactions and Enforcement Programs.—Section 5318 of title 31, United States Code, is amended by adding at the end the following:

"(g) Reporting of Suspicious Transactions.—

"(1) In general.—The Secretary may require financial institutions to report suspicious transactions relevant to possible violation of law or regulation.

"(2) Notification prohibited.—A financial institution that voluntarily reports a suspicious transaction, or that reports a suspicious transaction pursuant to this section or any other authority, may not notify any person involved in the transaction that the transaction has been reported.

"(h) Anti-Money Laundering Programs.—In order to guard against money laundering through financial institutions, the Secretary may require financial institutions to carry out anti-money laundering programs, including at a minimum—

"(1) the development of internal policies, procedures, and controls,

"(2) the designation of a compliance officer,

"(3) an ongoing employee training program, and

"(4) an independent audit function to test programs.

The Secretary may promulgate minimum standards for such programs.".

SEC. 928. REPORT ON CURRENCY CHANGES.

The Secretary of the Treasury, in consultation with the Attorney General and the Administrator of Drug Enforcement, shall report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives, not later than 90 days after the date of enactment of this Act, on the advantages for money laundering enforcement, and any disadvantages, of—

(1) changing the size, denominations, or color of United States currency; or

(2) providing that the color of United States currency in circulation in countries outside the United States will be of a different color than currency circulating in the United States.

SEC. 929. REPORT ON BANK PROSECUTIONS.

(a) In General.—The Attorney General, after obtaining the views of all interested agencies, shall determine to what extent compliance with the Money Laundering Control Act (18 U.S.C. 1956 and 1957), the Bank Secrecy Act (31 U.S.C. 5322), criminal referral reporting obligations, and cooperation with law enforcement authorities generally, would be enhanced by the issuance of guidelines for the prosecution of financial institutions for violations of such Acts. Such guidelines, if issued, shall reflect the standards for anti-money laundering programs issued under section 5318(h) of title 31, United States Code.

(b) Report.—Not later than 6 months after the date of enactment of this Act, the Attorney General shall transmit to the Congress a report on such determination.

SEC. 930. ANTI-MONEY LAUNDERING TRAINING TEAM.

(a) In General.—The Secretary of the Treasury shall establish a team of experts to assist and provide training to foreign governments and agencies thereof in developing and expanding their capabilities for investigating and prosecuting violations of money laundering and related laws.

(b) Authorization.—There are authorized to be appropriated not more than $1,000,000 to carry out this section.

SEC. 931. MONEY LAUNDERING REPORTING REQUIREMENTS.

(a) OBJECTIVE.—The objective of the United States in dealing with the problem of international money laundering is to ensure that countries adopt comprehensive domestic measures against money laundering and cooperate with each other in narcotics money laundering investigations, prosecutions, and related forfeiture actions. The President shall report annually to Congress on bilateral and multilateral efforts to meet this objective. This report shall be submitted with the report required under section 481(e) of the Foreign Assistance Act of 1961.

(b) CONTENTS OF REPORT.—The report shall include—

(1) information on bilateral and multilateral initiatives pursued by the Department of State, the Department of Justice, and the Department of the Treasury, and other Government agencies, individually or collectively, to achieve the anti-money laundering objective of the United States;

(2) information on relevant bilateral agreements and on the actions of international organizations and groups;

(3) information on the countries which have ratified the United Nations Convention on Illicit Traffic in Narcotic Drugs and Other Psychotropic Substances and on measures adopted by governments and organizations to implement the money laundering provisions of the United Nations Convention, the recommendations of the Financial Action Task Force, the policy directive of the European Community, the legislative guidelines of the Organization of American States, and similar declarations;

(4) information on the extent to which each major drug producing and drug transit country, as specified in section 481 of the Foreign Assistance Act of 1961, and each additional country that has been determined by the Department of the Treasury, the Department of Justice, the Department of State, and the Office of National Drug Control Policy, in consultation, to be significant in the fight against money laundering—

(A) has adequate mechanisms to exchange financial records in narcotics money laundering and narcotics-related investigations and proceedings; and

(B) has adopted laws, regulations, and administrative measures considered necessary to prevent and detect narcotics-related money laundering, including whether a country has—

(i) criminalized narcotics money laundering;

(ii) required banks and other financial institutions to know and record the identity of customers engaging in significant transactions, including large currency transactions;

(iii) required banks and other financial institutions to maintain, for an adequate time, records necessary to reconstruct significant transactions through financial institutions in order to be able to respond quickly to information requests from appropriate government authorities in narcotics-related money laundering cases;

(iv) required or allowed financial institutions to report suspicious transactions;

(v) established systems for identifying, tracing, freezing, seizing, and forfeiting narcotics-related assets; and

(vi) addressed the problem of international transportation of illegal-source currency and monetary instruments;

(5) details of significant instances of noncooperation with the United States in narcotics-related money laundering and other narcotics-related cases; and

(6) a summary of initiatives taken by the United States or any international organization, including the imposition of sanctions, with respect to any country based on that country's actions with respect to narcotics-related money laundering matters.

(c) SPECIFICITY OF REPORT.—The report should be in sufficient detail to assure the Congress that concerned agencies—

(1) are pursuing a common strategy with respect to achieving international cooperation against money laundering which includes a summary of United States objectives on a country-by-country basis; and

(2) have agreed upon approaches and responsibilities for implementation of the strategy, not limited to the conduct of negotiations to achieve treaties and agreements.

TITLE X—ASSET CONSERVATION AND DEPOSIT INSURANCE PROTECTION

SEC. 1001. SHORT TITLE.

This title may be cited as the "Asset Conservation and Deposit Insurance Protection Act of 1991".

SEC. 1002. AMENDMENT TO THE FEDERAL DEPOSIT INSURANCE ACT.

(a) IN GENERAL.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following new section:

"SEC. 12. ASSET CONSERVATION.

"(a) LIABILITY LIMITATIONS.—

"(1) INSURED DEPOSITORY INSTITUTIONS.—The liability of an insured depository institution under any Federal law imposing strict liability for the release or threatened release of a hazardous substance at, from, or in connection with property—

"(A) acquired through foreclosure;

"(B) held, directly or indirectly, in a fiduciary capacity;

"(C) held by a lessor pursuant to the terms of an extension of credit; or

"(D) subject to financial control or financial oversight pursuant to the terms of an extension of credit,

shall be limited to the actual benefit conferred on such institution (in its corporate capacity) by a removal, remedial, or other response action undertaken by another party.

"(2) MORTGAGE LENDERS.—The liability of a mortgage lender under Federal law imposing strict liability for the release or threatened release of a hazardous substance at or from property—

"(A) acquired through foreclosure; or

"(B) subject to financial control or financial oversight pursuant to the terms of an extension of credit,

shall be limited to the actual benefit conferred on such lender by a removal, remedial, or other response action undertaken by another party.

"(3) Safe harbors.—Notwithstanding paragraphs (1) and (2), an insured depository institution or mortgage lender shall not be liable under any Federal law described in paragraph (1) or (2) based solely on the fact that the institution or lender—

"(A) holds a security interest only as a depository institution or mortgage lender, or abandons or releases its security interest in the collateral before foreclosure;

"(B) has the unexercised capacity to influence operations at or on property in which it has a security interest;

"(C) includes in the terms of its extension of credit covenants, warranties, or other terms and conditions that relate to the borrower's compliance with environmental laws;

"(D) monitors or enforces the terms and conditions of the extension of credit;

"(E) monitors or undertakes one or more inspections of the property;

"(F) requires the borrower to cleanup the property prior to or during the term of the extension of credit;

"(G) provides financial or other advice or counseling in an effort to mitigate, prevent, or cure default or diminution in the value of the property;

"(H) restructures, renegotiates, or otherwise agrees to alter the terms and conditions of the extension of credit;

"(I) acquires the property through foreclosure;

"(J) exercises whatever other remedies at law or in equity may be available under applicable law for the borrower's breach of any term or condition of the extension of credit; or

"(K) declines to take any of the actions described in this paragraph.

"(b) Actual Benefit.—For the purpose of this section, the actual benefit conferred on an institution or lender by a removal, remedial, or other response action shall be equal to the net gain, if any, realized by such institution or lender due to such action. In no event may the actual benefit exceed the full fair market value of the property following such removal, remedial, or other response action.

"(c) Exclusion.—The limitations on liability provided under subsection (a) shall not apply to—

"(1) any person that has caused the release of a hazardous substance that forms the basis for liability described in subsection (a);

"(2) any person that, following the acquisition of property through foreclosure, failed to exercise due care to protect the public health and safety with respect to identified releases of hazardous substances that form the basis for liability described in subsection (a); or

"(3) any person that actively directs or conducts business operations that result in the release of a hazardous substance that forms the basis for liability described in subsection (a).

"(d) GOVERNMENTAL ENTITIES.—

"(1) BANKING AND LENDING AGENCIES.—A Federal banking or lending agency shall not be liable under any law imposing strict liability for the release or threatened release of a hazardous substance at or from property (including any right or interest therein) acquired—

"(A) in connection with the exercise of receivership or conservatorship authority, or the liquidation or winding up of the affairs of an insured depository institution, including any of its subsidiaries;

"(B) in connection with the provision of loans, discounts, advances, guarantees, insurance or other financial assistance; or

"(C) in connection with property received in any civil or criminal proceeding, or administrative enforcement action, whether by settlement or order.

"(2) LIMITATION.—The immunity provided by paragraph (1) shall not apply to—

"(A) any entity that has caused the release of a hazardous substance that forms the basis for liability described in paragraph (1); or

"(B) any entity that, following the acquisition of property through foreclosure, failed to exercise due care to protect the public health and safety with respect to identified releases of hazardous substances that form the basis for liability described in paragraph (1).

"(3) SUBSEQUENT PURCHASER.—The immunity provided by paragraph (1) shall extend to the first subsequent purchaser of property described in such paragraph from a Federal banking or lending agency, unless such purchaser—

"(A) would otherwise be liable or potentially liable for all or part of the costs of the removal, remedial, or other response action due to a prior relationship with the property;

"(B) is or was affiliated with or related to a party described in subparagraph (A); or

"(C) fails to exercise due care to protect the public health and safety with respect to identified releases of hazardous substances that give rise to a removal, remedial, or other response action.

"(4) LIMITED LIABILITY FOR EMERGENCY RESPONSE ACTIONS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), a Federal banking or lending agency shall not be liable for costs or damages in connection with actions taken in response to an emergency created by the release or threatened release of a hazardous substance at or from a property described in paragraph (1).

"(B) GROSS NEGLIGENCE STANDARD.—This paragraph does not preclude liability for costs or damages resulting from the gross negligence or intentional misconduct by a Federal banking or lending agency in responding to an emergency created by the release or threatened release of a hazardous substance in connection with a property described in paragraph (1).

"(C) DEFINITION.—For the purpose of this paragraph, the term 'gross negligence' means reckless, willful, or wanton misconduct.

"(e) LIEN EXEMPTION.—Any property transferred pursuant to subsection (d) or held by a Federal banking or lending agency shall not be subject to any lien for costs or damages associated with the release or threatened release of a hazardous substance known to exist at the time of the transfer.

"(f) EXEMPTION FROM COVENANTS TO REMEDIATE.—A Federal banking or lending agency shall be exempt from any law requiring such agency to grant covenants warranting that a removal, remedial, or other response action has been, or will in the future be, taken with respect to property acquired in the manner described in subsection (d)(1).

"(g) ENVIRONMENTAL ASSESSMENTS.—

"(1) DEPOSITORY INSTITUTIONS.—The appropriate Federal financial institutions regulatory agencies shall, after consulting with the Administrator of the Environmental Protection Agency and the Secretary of Housing and Urban Development, promulgate regulations that require insured depository institutions to develop and implement adequate procedures to evaluate actual and potential environmental risks that may arise from or at property prior to making an extension of credit that involves a security interest in such property. The regulations may provide for different types of environmental assessments in order to account for different levels of risk that may be posed by different classes of collateral.

"(2) MORTGAGE LENDERS.—The Secretary of Housing and Urban Development shall, after consultation with the Administrator of the Environmental Protection Agency and the appropriate Federal financial institutions regulatory agencies, promulgate regulations to assure that mortgage lenders develop and implement procedures to evaluate actual and potential environmental risks that may arise from or at property prior to making an extension of credit secured by such property. The regulations may provide for different types of environmental assessments in order to take into account the level of risk that may be posed by particular classes of collateral.

"(3) FINAL REGULATIONS.—Final regulations required to be promulgated pursuant to paragraph (1) shall be issued within 180 days after the date of enactment of this section.

"(h) DEFINITIONS.—For the purposes of this section:

"(1) The term 'property acquired through foreclosure' or 'acquires property through foreclosure' means property acquired, or the act of acquiring property, from a nonaffiliated party by an insured depository institution or mortgage lender—

"(A) through purchase at sales under judgment or decree, power of sales, nonjudicial foreclosure sales, or from a trustee, deed in lieu of foreclosure, or similar conveyance, or through repossession, if such property was security for an extension of credit previously contracted;

"(B) through conveyance pursuant to an extension of credit previously contracted, including the termination of a lease agreement; or

"(C) through any other formal or informal manner by which the insured depository institution or mortgage lender temporarily acquires, for subsequent disposition, possession of collateral in order to protect its security interest.

Property is not acquired through foreclosure if the insured depository institution or mortgage lender does not seek to sell or otherwise divest such property at the earliest practical time, taking into account market conditions and legal and regulatory requirements.

"(2) The term 'mortgage lender' means—

"(A) a company (other than an insured depository institution) that—

"(i) is regularly engaged in the business of making extensions of credit secured, in whole or in part, by real property to nonaffiliated parties, and

"(ii) substantially complies with the environmental assessment requirements imposed under subsection (g), after final regulations under that subsection become effective;

"(B) the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal Agricultural Mortgage Corporation, if such Association or Corporation requires institutions from which it purchases mortgages (or other obligations) to comply with the requirements of subsection (g), after final regulations under that subsection become effective; and

"(C) any person regularly engaged in the business of insuring or guaranteeing against a default in the payment of an extension of credit to nonaffiliated parties, secured in whole or in part by real property, and extended by a mortgage lender (as such term is defined in subparagraph (A) of this paragraph), or an insured depository institution.

"(3) The term 'fiduciary capacity' means acting for the benefit of a nonaffiliated person as a trustee, executor, administrator, custodian, guardian of estates, receiver, conservator, committee of estates of lunatics, or any similar capacity.

"(4) The term 'extension of credit' includes lease transactions that are functionally equivalent to a secured loan and that comply with regulations issued by the appropriate Federal banking agency or State banking authority.

"(5) The term 'insured depository institution' has the same meaning as in section 3(c), and shall also include—

"(A) a federally insured credit union;

"(B) a bank or association chartered under the Farm Credit Act of 1971; and

"(C) a leasing company that is an affiliate of an insured depository institution (as such term is defined in this paragraph).

"(6) The term 'Federal banking or lending agency' means the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the Board of Governors of the Federal Reserve System, a Federal Reserve Bank, a Federal Home Loan Bank, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration Board, the Farm Credit Administration, the Farm Credit System Insurance Corporation, the Farm Credit System Assistance Board, the Farmers Home Administration, the Rural Electrification Administration, and the Small Business Administration, in any of their capacities, and their agents.

"(7) The term 'appropriate Federal financial institutions regulatory agency' has the same meaning given such term in section 8(e), except that it does not include the Secretary of the Treasury or the Oversight Board.

"(8) The term 'release' has the meaning given such term in section 101(22) of Public Law 96-510, and also includes the use, storage, disposal, treatment, generation, or transportation of a hazardous substance.

"(9) The term 'hazardous substance' includes any substance or material that is subject to regulation or response under Federal or State environmental laws or regulations.

"(10) The term 'security interest' includes rights under a mortgage, deed of trust, assignment, judgment lien, pledge, security agreement, factoring agreement, lease, or any other right accruing to a creditor under the terms of an extension of credit to secure the repayment of money, the performance of a duty or some other obligation.

"(i) SAVINGS CLAUSE.—Nothing in this section shall affect the rights or immunities or other defenses that are available under other applicable law to any party subject to the provisions of this section. Nothing in this section shall be construed to create any liability for any party.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective upon the date of enactment of this title, except that it shall not affect any administrative or judicial claims that have been formally filed as of such date.

TITLE XI—MISCELLANEOUS

Subtitle A—Presidential Insurance Commission

SEC. 1101. SHORT TITLE.

This subtitle may be cited as the "Presidential Insurance Commission Act of 1991".

SEC. 1102. FINDINGS.

The Congress finds that—

(1) the property and casualty insurance, life insurance, health insurance, and reinsurance industries play a major and vital role in the capital formation and lending in the United States economy;

(2) at the end of 1989, life and health and property and casualty insurers combined controlled just under $1,800,000,000,000 in assets invested in the United States;

(3) these insurer assets represented slightly less than 18 percent of the financial assets of all non-governmental financial intermediaries in the United States;

(4) of total United States assets, insurers controlled—

(A) 50.7 percent of all United States held corporate and foreign bonds;

(B) 32.1 percent of all tax-exempt bonds;

(C) 13.8 percent of United States Treasury securities;

(D) 18.2 percent of Federal agency securities;

(E) 12.2 percent of mortgages;

(F) 14.7 percent of corporate equities;

(G) 10.3 percent of open market paper; and

(H) 12 percent of all other United States assets; and

(5) a Presidential commission should be established—

(A) to assess the condition of the insurance industry;

(B) to make recommendations to improve the financial health and competitiveness of the insurance industry; and

(C) to assure the availability of insurance to consumers at competitive prices.

SEC. 1103. ESTABLISHMENT.

There is established a Presidential Commission on Insurance (hereafter in this subtitle referred to as the "Commission").

SEC. 1104. DUTIES OF THE COMMISSION.

The Commission shall—

(1) assess the condition of the property and casualty insurance, life insurance, health insurance, and reinsurance industries, including consideration of—

(A) the present and projected long-term financial health of such industries;

(B) the adequacy of assured payout to policyholders, including an assessment of the sufficiency of existing State guaranty funds, the likely effect of proposed changes in these funds by the National Association of Insurance Commissioners, and the need and shape of any Federal role in assuring insurer solvency;

(C) the appropriateness of the extent of solvency protection provided to individual policyholders and corporate policyholders;

(D) the impact of changes in the State and Federal liability systems, particularly with respect to long-term liability, on insurance industry solvency;

(E) the effect of the McCarran-Ferguson Act and State regulation on consumer protection and competition, including pricing, product development, and solvency, in these industries;

(F) the appropriateness of the present allocation of Federal and State responsibilities in regulating insurance and the underlying liability systems; and

(G) whether there are some forms of catastrophic risks, such as earthquakes, that deserve special insurance treatment; and

(2) recommend, on the basis of the Commission's findings under paragraph (1), any necessary legislative and regulatory changes that will improve the domestic and international financial health and competitiveness of such industries, and thereby assure consumers of the availability of adequate insurance coverage when an insured event occurs, and of the best possible range of products at competitive prices.

SEC. 1105. MEMBERSHIP AND COMPENSATION.

(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 15 members, including—

(1) the Secretary of the Treasury;

(2) the Attorney General of the United States;

(3) the Secretary of Transportation;

(4) the Secretary of Commerce;

(5) the Chairman of the Federal Trade Commission; and

(6) 10 members from the private sector having expertise in insurance, financial services, antitrust, liability law, and consumer issues, at least 1 of whom has expertise in State regulation of insurance, and at least 2 of whom have expertise in consumer issues, to be appointed by the President.

(b) DESIGNEES.—An appropriate designee of any member described in paragraphs (1) through (5) of subsection (a) may serve on the Commission in the place of such member and under the same terms and conditions as such member.

(c) CONSULTATION BY THE SECRETARY OF THE TREASURY.—The Secretary of the Treasury shall consult with—

(1) the Chairman of the Board of Governors of the Federal Reserve System;

(2) the Chairperson of the Federal Deposit Insurance Corporation; and

(3) the Chairman of the Securities and Exchange Commission,

with respect to all financial and other matters within their respective jurisdictions that are under consideration by the Commission.

(d) ELIGIBILITY.—No member or officer of the Congress, or other member or officer of the Executive Branch of the United States Government or any State government may be appointed to be a member of the Commission pursuant to paragraph (6) of subsection (a).

(e) TERMS.—

(1) IN GENERAL.—Each member shall be appointed for the life of the Commission.

(2) VACANCY.—A vacancy on the Commission shall be filled in the same manner in which the original appointment was made.

(f) COMPENSATION.—

(1) IN GENERAL.—Members of the Commission appointed pursuant to subsection (a)(6) shall be compensated at a rate equal to the annual rate of basic pay for GS-18 of the General Schedule.

(2) Travel expenses.—Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(g) Quorum.—

(1) Majority.—A majority of the members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(2) Approval of actions.—All recommendations and reports of the Commission required by this subtitle shall be approved only by a majority vote of a quorum of the Commission.

(h) Chairperson.—The President shall select 1 member appointed pursuant to subsection (a)(6) to serve as the Chairperson of the Commission.

(i) Meetings.—The Commission shall meet at the call of the Chairperson or a majority of the members.

SEC. 1106. POWERS OF COMMISSION.

(a) Hearings and Sessions.—The Commission may—

(1) hold hearings, sit and act at times and places, take testimony, and receive evidence as the Commission considers appropriate; and

(2) administer oaths or affirmations to witnesses appearing before the Commission,

for the purpose of carrying out this subtitle.

(b) Powers of Members and Agents.—Any member or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take by this subtitle.

(c) Subpoena Power.—

(1) In general.—The Commission may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence relating to any matter under investigation by the Commission.

(2) Administrative aspects of subpoena.—

(A) Attendance or production at designated site.—The attendance of witnesses and the production of evidence may be required from any place within the United States at any designated place of hearing within the United States.

(B) Fees and travel expenses.—Persons served with a subpoena under this subsection shall be paid the same fees and mileage for travel within the United States that are paid witnesses in Federal courts.

(C) No liability for other expenses.—The Commission and the United States shall not be liable for any expense, other than an expense described in subparagraph (B), incurred in connection with the production of any evidence under this subsection.

(3) Confidentiality.—Information obtained under this section which is deemed confidential, or with reference to which a request for confidential treatment is made by the person furnishing such information, shall be exempt from disclosure under section 552 of title 5, United States Code, and such information shall not be published or disclosed unless the Commission determines that the withholding thereof is contrary to the

national interest. The provisions of the preceding sentence shall not apply to the publication or disclosure of data that are aggregated in a manner that ensures protection of the identity of the person furnishing such data.

(4) FAILURE TO OBEY A SUBPOENA.—

(A) APPLICATION TO COURT.—If a person refuses to obey a subpoena issued under paragraph (1), the Commission may apply to a district court of the United States for an order requiring that person to appear before the Commission to give testimony or produce evidence, as the case may be, relating to the matter under investigation.

(B) JURISDICTION OF COURT.—The application may be made within the judicial district where the hearing is conducted or where that person is found, resides, or transacts business.

(C) FAILURE TO COMPLY WITH ORDER.—Any failure to obey the order of the court may be punished by the court as civil contempt.

(5) SERVICE OF SUBPOENAS.—The subpoenas of the Commission shall be served in the manner provided for subpoenas issued by a United States district court under the Federal Rules of Civil Procedure for the United States district courts.

(6) SERVICE OF PROCESS.—All process of any court to which application is to be made under paragraph (3) may be served in the judicial district in which the person required to be served resides or may be found.

(d) OBTAINING OFFICIAL DATA.—

(1) AUTHORITY.—Notwithstanding any provision of section 552a of title 5, United States Code, the Commission may secure directly from any department or agency of the United States information necessary to enable the Commission to carry out this subtitle.

(2) PROCEDURE.—Upon request of the Chairperson of the Commission, the head of that department or agency shall furnish the information requested to the Commission.

(e) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(f) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its responsibilities under this subtitle.

SEC. 1107. STAFF OF COMMISSION; EXPERTS AND CONSULTANTS.

(a) STAFF.—Subject to such regulations as the Commission may prescribe, the Chairperson may appoint and fix the pay of such personnel as the Chairperson considers appropriate.

(b) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule.

(c) Experts and Consultants.—Subject to rules prescribed by the Commission, the Chairperson may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the annual rate of basic pay payable for GS-18 of the General Schedule.

(d) Staff of Federal Agencies.—Upon request of the Chairperson, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agency to the Commission to assist it in carrying out its duties under this subtitle.

SEC. 1108. REPORT.

Not later than January 31, 1993, the Commission shall submit to the President and the Congress a final report containing a detailed statement of its findings, together with any recommendations for legislation or administrative action that the Commission considers appropriate, in accordance with the requirements of section 1124.

SEC. 1109. TERMINATION.

The Commission shall terminate not later than 60 days following submission of the report required by section 1128.

SEC. 1110. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $3,000,000 to carry out the purposes of this subtitle.

Subtitle B—General Provisions

SEC. 1121. CREDIT UNIONS.

(a) Full Faith and Credit.—Section 201 of the Federal Credit Union Act (12 U.S.C. 1781) (hereafter referred to in this section as the "Act") is amended—

(1) by redesignating subsections (b) through (d) as subsections (c) through (e), respectively; and

(2) by inserting after subsection (a) the following:

"(b) Full Faith and Credit of the United States.—The full faith and credit of the United States is pledged to pay insured accounts under this title.".

(b) Investment in Other Financial Institutions.—

(1) Central credit unions.—

(A) In general.—Section 107(7) of the Act (12 U.S.C. 1757(7)) is amended—

(i) by striking subparagraph (G); and

(ii) by redesignating subparagraphs (H) through (K) as subparagraphs (G) through (J), respectively.

(B) Effective date.—This amendment shall take effect 1 year from the date of enactment of this section.

(2) Deposits.—Section 107(8) of the Act (12 U.S.C. 1757(8)) is amended to read as follows:

"(8) to make or maintain—

"(A) deposits in national banks, or in banks or institutions the accounts of which are insured by the Federal Deposit Insurance Corporation, and

"(B) in the case of Federal credit unions or credit unions authorized by the Department of Defense operating suboffices on American military installations in foreign countries or trust territories of the United States, demand deposit accounts in banks located in those countries or trust territories, if such banks are correspondents of banks described in subparagraph (A) subject to such regulations as may be issued by the Board;".

(3) CORPORATE CREDIT UNIONS.—Section 120(a) of the Act (12 U.S.C. 1766(a)) is amended—

(A) in the second sentence by striking "central credit union chartered by the Board" and inserting "Corporate credit union as defined by the Board"; and

(B) by adding the following sentence at the end: "The Board shall by regulation establish (i) limits on loans and investments by a corporate credit union to a single obligor, and (ii) minimum capital requirements for corporate credit unions.".

(c) STRENGTHENING NATIONAL CREDIT UNION SHARE INSURANCE FUND.—Section 202 of the Act (12 U.S.C. 1782) is amended—

(1) in subsection (c)(1)(A), by striking clause (ii) and redesignating clause (iii) as clause (ii);

(2) by amending subsection (c)(2) to read as follows:

"(2)(A) At such times as the Board prescribes (but not more than twice in any calendar year), each insured credit union shall pay to the fund a premium charge for insurance in an amount stated as a percentage of insured shares. The percentage shall be the same for all insured credit unions.

"(B) Premium charges assessed during a calendar year shall not, in the aggregate, exceed one-twelfth of 1 percent of insured shares, except upon a unanimous vote of the Board members.

"(C) The Board may assess a premium charge only if—

"(i) the equity level of the fund is less than 1.3 percent of the aggregate amount of the insured shares in all insured credit unions; and

"(ii) the premium charge does not exceed the amount necessary to restore the fund to that level.

"(D) If the equity level of the fund is less than 1.2 percent of the aggregate amount of the insured shares in all insured credit unions, the Board shall, subject to subparagraph (B), assess a premium charge in such an amount as the Board determines to be necessary to restore the fund to and maintain the fund at that level.

"(E) If the equity level of the fund is not less than 1.2 percent of the aggregate amount of the insured shares in all insured credit unions, the Board may assess a premium charge only—

"(i) upon a unanimous vote of the Board members; and

"(ii) in an amount not exceeding one-twelfth of 1 percent of insured shares.";

(3) by striking subsection (c)(3) and inserting the following:

"(3) If any loans to the fund from the Federal Government and the interest thereon have been repaid and the fund exceeds the normal operating level at the end of an insurance year, the Board shall effect for that insurance year a pro rata distribution to insured credit unions of the maximum possible amount that does not reduce the fund below the normal operating level.";

(4) in subsection (h)—

(A) by amending paragraph (2) to read as follows:

"(2) the term 'normal operating level' when applied to the fund, means an amount of fund equity as established by the Board and equal to not less than 1.2 percent and not more than 1.5 percent of the aggregate amount of the insured shares in all insured credit unions;";

(B) by redesignating paragraph (3) as paragraph (5); and

(C) by inserting after paragraph (2) the following:

"(3) the term 'available assets level', when applied to the fund, means an amount, determined as the sum of cash and unencumbered investments (as authorized pursuant to section 203(c) and carried at market value) minus direct liabilities of the fund and contingent liabilities for which no provision for losses has been made, stated as a percentage of the aggregate amount of the insured shares in all insured credit unions;

"(4) the term 'equity level' means the amount of fund capitalization (including insured credit unions' 1 percent capitalization deposits and the fund's retained earnings balance) stated as a percentage of the aggregate amount of the insured shares in all insured credit unions; and"; and

(5) by adding at the end the following:

"(i) MONITORING AND PUBLISHING ASSET LEVEL.—The Board shall closely monitor, and publish at least semiannually, the available asset level of the fund.".

(d) MINIMUM CAPITAL REQUIREMENT.—

(1) IN GENERAL.—Section 116(a) of the Act (12 U.S.C. 1762(a)) is amended—

(A) in paragraph (1), by inserting before the period at the end the following: ", then (C) 3.5 percent of gross income until the regular reserve is equal to 7 percent of the total outstanding loans and risk assets"; and

(B) by adding at the end the following new paragraph:

"(4) A credit union in existence for more than 5 years and holding reserves and undivided earnings equal to less than a minimum capital level stated as a percentage of total assets and established by regulation of the Board, shall be subject to a formal written supervisory agreement with the Board. Such agreement shall include an operating plan to reach the minimum capital level within a period established by the Board. In establishing minimum capital levels under this paragraph, the Board shall consider the differences among credit unions, and shall give recently formed credit unions a reasonable time in which to build capital through retained earnings.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall become effective on January 1, 1993.

(e) LOAN TO ONE BORROWER LIMIT.—

(1) IN GENERAL.—Section 107(5)(A) of the Act (12 U.S.C. 1757(5)(A)) is amended—

(A) in clause (viii), by inserting "and" after the semicolon; and

(B) in clause (ix), by striking the semicolon and all that follows through the end of clause (x) and inserting a period.

(2) LOAN PROVISIONS.—Section 107(5) of the Act (12 U.S.C. 1757(5)) is amended by adding at the end the following new subparagraph:

"(F)(i) Loans must be approved by the credit committee or a loan officer, but no loan may be made to any member if, upon the making of that loan, the member would be indebted to the Federal credit union upon loans made to such member in an aggregate amount exceeding the greater of—

"(I) $100,000,

"(II) 20 percent of the credit union's reserves and undivided earnings, or

"(III) 1.5 percent of the credit union's assets.

"(ii) In calculating compliance with the limits in subclauses (I) through (III) of clause (i), any loan on which the United States, its agencies, or any State has fully guaranteed the principal and interest shall be disregarded, and with respect to any other loan guaranteed by the United States, its agencies, or any State, one-half of the portion guaranteed shall be disregarded.

"(iii) In the case of loans by a credit union for farming or fishing purposes to persons deriving their livelihood primarily from farming or fishing, where the membership of the credit union substantially consists of such persons, clause (i)(III) shall apply with '3 percent' substituted for '1.5 percent'.".

"(iv) The Board may, by regulation, establish other limits for certain credit unions or classes of loans, consistent with protecting the share insurance fund.".

(3) EFFECTIVE DATE.—The amendments made by paragraphs (1) and (2) shall become effective 180 days after the date of enactment of this Act.

(f) AMENDMENT TO AUTHORIZE NCUA BOARD TO PLACE FEDERALLY INSURED, STATE-CHARTERED CREDIT UNIONS INTO LIQUIDATION.—Section 207(a)(1) of the Act (12 U.S.C. 1787(a)(1)) is amended—

(1) by redesignating subparagraph (B) as subparagraph (D); and

(2) by inserting the following after subparagraph (A):

"(B) Notwithstanding any other provision of this Act or other law, the Board shall have power and jurisdiction to appoint itself as liquidating agent of any State-chartered credit union insured under this title, and close such credit union, if it determines that the credit union is insolvent or bankrupt. In such cases, the Board shall have the power and duties specified in this section applicable to liquidations of Federal credit unions.

"(C)(i) Except as provided in clause (ii), the authority conferred by subparagraph (B) shall not be exercised without the written approval of the State official having jurisdiction over the State-chartered credit union that the grounds specified for such exercise exist.

"(ii) If such approval has not been received within 30 days of receipt of notice by the State that the Board has determined such grounds exist, and the Board has responded in writing to the State's written reasons, if any, for withholding approval, then the Board may proceed without State approval only by unanimous vote of the Board.".

(g) Central Liquidity Facility; Reduced Borrowing Authority and Prohibitions on Loans or Guarantees to Private Share Insurers.—Section 307(a) of the Act (12 U.S.C. 1795f(a)) is amended—

(1) in paragraph (4)(A) by striking "twelve" and inserting "2";

(2) by striking paragraph (16); and

(3) by redesignating paragraphs (17) and (18) as paragraphs (16) and (17), respectively.

(h) Strengthening Removal and Prohibition Authority.—Section 206(g)(1) of the Federal Credit Union Act (12 U.S.C. 1786(g)(1)) is amended to read as follows:

"(g) Removal and Prohibition Authority.—

"(1) Authority to issue order.—The Board may serve upon an institution-affiliated party a written notice of the Board's intention to remove such party from office or to prohibit any further participation by such party, in any manner, in the conduct of the affairs of any insured credit union, if the Board determines that—

"(A) the institution-affiliated party has, directly or indirectly—

"(i) violated—

"(I) any law or regulation;

"(II) any cease-and-desist order which has become final;

"(III) any condition imposed in writing by the Board in connection with the grant of any application or other request by such credit union; or

"(IV) any written agreement between such credit union and the Board;

"(ii) engaged or participated in any unsafe or unsound practice in connection with any insured credit union or business institution; or

"(iii) committee or engaged in any act, omission, or practice which constitutes a breach of such party's fiduciary duty; and

"(B)(i) by reason of the violation, practice, or breach described in any clause of subparagraph (A)—

"(I) such insured credit union or business institution has suffered or is likely to suffer financial loss or other damage that may have a significant effect on the financial condition of that credit union;

"(II) the interests of the credit union's members have been or could be prejudiced in a manner that may have a significant effect on the financial condition of that credit union; or

"(III) such party has received financial gain or other benefit by reason of such violation, practice, or breach; or

"(ii) such violation, practice, or breach—

"(I) involves personal dishonesty on the part of such party; or

"(II) demonstrates willful or continuing disregard by such party for the safety or soundness of such insured credit union or business institution.".

(i) REPEAL OF AUTHORITY TO BORROW FROM FARM CREDIT BANKS.—Section 107(9) of the Act (12 U.S.C. 1757(9)) is amended—

(1) by inserting a semicolon after "paid-in and unimpaired capital and surplus"; and

(2) by striking all that follows the semicolon.

(j) EFFECTIVE DATE.—The amendment made by subsection (c)(2) shall become effective on July 1, 1992.

SEC. 1122. STRENGTHENING FEDERAL BANKING AGENCIES' AUTHORITY TO REMOVE PERSONS GUILTY OF MISCONDUCT.

Section 8(e)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1818(e)(1)) is amended to read as follows:

"(e) REMOVAL AND PROHIBITION AUTHORITY.—

"(1) AUTHORITY TO ISSUE ORDER.—The appropriate Federal banking agency may serve upon an institution-affiliated party a written notice of the agency's intention to remove such party from office or to prohibit any further participation by such party, in any manner, in the conduct of the affairs of any insured depository institution, if the agency determines that—

"(A) the institution-affiliated party has, directly or indirectly—

"(i) violated—

"(I) any law or regulation;

"(II) any cease-and-desist order which has become final;

"(III) any condition imposed in writing by the appropriate Federal banking agency in connection with the grant of any application or other request by such depository institution; or

"(IV) any written agreement between such depository institution and such agency;

"(ii) engaged or participated in any unsafe or unsound practice in connection with any insured depository institution or business institution; or

"(iii) committed or engaged in any act, omission, or practice which constitutes a breach of such party's fiduciary duty; and

"(B)(i) by reason of the violation, practice, or breach described in any clause of subparagraph (A)—

"(I) such insured institution or business institution has suffered or is likely to suffer financial loss or other damage that may have a significant effect on the financial condition of that institution;

"(II) the interest of the insured depository institution's depositors have been or could be prejudiced in a manner that may have a significant effect on the financial condition of that institution; or

"(III) such party has received financial gain or other benefit by reason of such violation, practice, or breach; or

"(ii) such violation, practice, or breach—

"(I) involves personal dishonesty on the part of such party; or

"(II) demonstrates willful or continuing disregard by such party for the safety or soundness of such insured depository institution or business institution.".

SEC. 1123. EMERGENCY LIQUIDITY.

Section 13 of the Federal Reserve Act (12 U.S.C. 343) is amended in the third paragraph by striking "of the kinds and maturities made eligible for discount for member banks under other provisions of this Act".

SEC. 1124. DISCLOSURE OF SECURITIES INVESTOR PROTECTION ACT COVERAGE.

(a) Disclosure of Protections.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended by adding at the end the following:

"(i) Disclosure of Securities Investor Protection Act Coverage.—

"(1) In general.—

"(A) Brokers and dealers.—It shall be unlawful for any broker or dealer to make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security by any customer except in accordance with the requirements of this subsection and the rules and regulations prescribed under this subsection.

"(B) Persons associated with a broker or dealer.—It shall be unlawful for any person associated with a broker or dealer (other than a natural person) to make use of the mails or any means or instrumentality of interstate commerce to participate in effecting, to purport to effect, to induce or attempt to induce a securities transaction by any customer except in accordance with the requirements of this subsection and the rules and regulations prescribed under this subsection.

"(2) Disclosure rules.—The Commission shall, by rule, set forth standards for the disclosure by brokers and dealers and persons associated with a broker or dealer (other than a natural person) to customers of information concerning coverage under the Securities Investor Protection Act of 1970 (hereafter referred to as 'SIPA'). The rules of the Commission—

"(A) shall require every broker or dealer effecting, and every person associated with a broker or dealer (other than a natural person) participating in effecting, purporting to effect, inducing, or attempting to induce a securities transaction with or for the account of a customer—

"(i) to provide such customer with written notification of SIPA coverage that discloses—

"(I) the current Securities Investor Protection Corporation (hereafter referred to as 'SIPC') membership status of such person; and

"(II) a general description, prescribed by SIPC, of the operation of SIPA, the method and extent of customer protection provided under SIPA, the transactions or instruments that are not protected under SIPA, and a statement indicating that SIPA does not protect against a decline in the market value of securities;

"(ii) in the case of a person associated with a broker or dealer (other than a natural person) that is not a member of SIPC or a broker or dealer that is not a member of SIPC, to obtain the customer's signature acknowledging receipt of the notification required by subsection (h)(2)(A)(i) on a form prescribed by the Commission;

"(iii) to provide the notification required by clause (i) of subsection (h)(2)(A) and, when required by clause (ii) of that provision, obtain a customer's signature—

"(I) in connection with establishing a new account for such customer with such broker, dealer, or person associated with a broker or dealer; and

"(II) not later than 6 months after the effective date of the Commission's rules, in the case of an account that was established for such customer prior to that effective date; and

"(iv) to include conspicuously in any periodic statement sent to a customer regarding a securities transaction, the following:

"'[NAME OF SIPC MEMBER, BROKER, DEALER, OR PERSON ASSOCIATED WITH A BROKER OR DEALER] IS [NOT] A MEMBER OF THE SECURITIES INVESTOR PROTECTION CORPORATION',

the bracketed portions to be filled in as appropriate; and

"(B) may, as the Commission finds necessary or appropriate in the public interest or for the protection of investors, require brokers, dealers, and persons associated with a broker or dealer (other than a natural person) to disclose to customers additional information concerning SIPA coverage.

"(3) Definition.—For purposes of this subsection, the Commission shall, by rule, define the term 'customer'. Such definition shall not include a broker, dealer, municipal securities dealer, or such other persons as the Commission shall provide in such rule.

"(4) Exemptions.—The Commission, as it determines consistent with the public interest and the protection of investors, may exempt, by rule or order, any person or class of persons, or any transaction or class of transactions from the requirements of this subsection.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective 1 year after the date of enactment of this Act.

SEC. 1125. HIRING AND COMPENSATION AUTHORITY OF SECURITIES AND EXCHANGE COMMISSION.

(a) AMENDMENT TO THE SECURITIES EXCHANGE ACT OF 1934.—Section 4(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78d(b)) is amended to read as follows:

"(b) APPOINTMENT AND COMPENSATION OF STAFF.—

"(1) APPOINTMENT AND COMPENSATION.—The Commission shall fix the compensation and number of, and appoint and direct, employees of the Commission. Rates of basic pay for all employees of the Commission may be set and adjusted by the Commission without regard to the provisions of chapter 51, subchapters III and VIII of chapter 53, and chapter 54 of title 5, United States Code.

"(2) ADDITIONAL COMPENSATION AND BENEFITS.—The Commission may provide additional compensation and benefits to employees of the Commission if the same type of compensation or benefits are then being provided by any Federal bank regulatory agency or, if not then being provided, could be provided by such an agency under applicable provisions of law, rule, or regulation. In setting and adjusting the total amount of compensation and benefits for employees of the Commission, the Commission shall seek to maintain comparability with the Federal bank regulatory agencies. For the purpose of this paragraph, the term 'Federal bank regulatory agency' means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration Board.".

(b) CONFORMING AMENDMENTS TO TITLE 5, UNITED STATES CODE.—

(1) Section 3132(a)(1) of title 5, United States Code, is amended—

(A) in subparagraph (C), by striking "or" after the semicolon;

(B) in subparagraph (D), by inserting "or" after the semicolon; and

(C) by adding at the end the following:

"(E) the Securities and Exchange Commission;".

(2) Section 5373 of title 5, United States Code, is amended—

(A) in paragraph (3), by striking "or" after the semicolon;

(B) in paragraph (4), by striking the period and inserting "; or"; and

(C) by adding at the end the following:

"(5) section 4(b) of the Securities Exchange Act of 1934.".

SEC. 1126. TIME LIMITATION ON PRIVATE RIGHTS OF ACTION UNDER THE SECURITIES EXCHANGE ACT OF 1934.

(a) DEADLINE FOR PRIVATE RIGHTS OF ACTION.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended by adding at the end the following new section:

"SEC. 36. LIMITATION ON PRIVATE RIGHTS OF ACTION.

"Except as otherwise provided in this Act, any private right of action arising from a violation of this Act shall be brought not later than the earlier of—

"(1) 5 years after the date on which such violation occurred; or

"(2) 2 years after the date on which the violation was discovered.".

(b) Effective Date.—The limitation provided in section 36 of the Securities Exchange Act of 1934, as added by subsection (a), shall apply to all proceedings pending on or commenced after June 19, 1991.

(c) Effect on Dismissed Causes of Action.—Except as otherwise provided in the Securities Exchange Act of 1934, any private civil action arising from a violation of such Act—

(1) which was dismissed as time barred subsequent to June 19, 1991;

(2) which would have been timely filed under the laws applicable in the jurisdiction as they existed on June 19, 1991; and

(3) which would have been timely filed pursuant to section 36 of the Securities Exchange Act of 1934, as added by subsection (a),

may be refiled not later than 60 days after the date of enactment of this Act.

SEC. 1127. CONVERSIONS DURING MORATORIUM.

(a) In General.—Section 5(d)(2)(C) of the Federal Deposit Insurance Act (12 U.S.C. 1815(d)(2)(C)) is amended—

(1) by striking "or" at the end of clause (ii);

(2) by striking the period at the end of clause (iii) and inserting "; or" and

(3) by adding at the end the following:

"(iv) in the case of a transaction described in clause (ii), (iii), or (iv) of subparagraph (B), the resulting or assuming bank or savings association agrees to make pro rata insurance premium payments to both the Bank Insurance Fund and the Savings Association Insurance Fund at the applicable assessment rates in effect for each Fund, with—

"(I) the percentage of deposits subject to assessment by each Fund equal to the percentage of the combined deposits assessable by such Fund at the time of the conversion transaction, as determined by the Corporation, and

"(II) the same percentage used to apportion any losses between the 2 funds arising from any failure of the combined institution.".

(b) Fees.—Section 5(d)(2)(E) of the Federal Deposit Insurance Act (12 U.S.C. 1815(d)(2)(E)) is amended by inserting ", other than a conversion described in subparagraph (C)(iv)," before "shall pay".

SEC. 1128. QUALIFIED THRIFT LENDER TEST.

(a) Reducing Test From 70 Percent to 65 Percent.—Section 10(m)(1)(B) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)(1)(B)) is amended by striking "70" and inserting "65".

(b) Increasing Amount of Liquid Assets Excludable From Portfolio Assets.—Section 10(m)(4)(B)(iii) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)(4)(B)(iii)) is amended by striking "10 percent" and inserting "20 percent".

(c) Increasing the Percentage of Qualifying Consumer Loans.—Section 10(m)(4)(C)(iii)(VI) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)(4)(C)(iii)(VI)) is amended by striking "5 percent" and inserting "10 percent".

(d) Federal Home Loan Bank Stock.—

(1) In general.—Section 10(m)(4)(C)(ii) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)(4)(C)(ii)) is amended by adding at the end the following:

"(VI) Shares of stock issued by any Federal home loan bank.".

(2) Double-counting not permitted.—Section 10(m)(5) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)(5)) is amended by adding at the end the following:

"(C) In determining the amount of a savings association's qualified thrift investments, the same asset shall not, directly or indirectly, be counted more than once.".

(e) Monthly Averaging Permissible for Certain Savings Associations.—Section 10(m) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)) is amended by adding at the end the following:

"(8) Monthly Averaging Permissible for Certain Savings Associations.—If a savings association has total assets of less than $1,000,000,000, paragraph (1)(B) shall apply with 'monthly' substituted for 'daily or weekly'.".

SEC. 1129. CONSUMER LENDING BY FEDERAL SAVINGS ASSOCIATIONS.

Section 5(c)(2)(D) of the Home Owners' Loan Act (12 U.S.C. 1464(c)(2)(D)) is amended in the second sentence by striking "30 percent" and inserting "35 percent".

SEC. 1130. NONCONTROLLING INVESTMENTS IN BANKS AND BANK HOLDING COMPANIES BY CERTAIN INVESTMENT FUNDS.

(a) In General.—Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) is amended by adding at the end the following new subsections:

"(q) Qualified Investor.—The term 'qualified investor' means an investment company (whether or not registered under the Investment Company Act of 1940), investment partnership, endowment, pension fund, or any other company that the Board determines by order or regulation to be principally engaged in investing, that is not controlled by any company other than a qualified investor or a limited adviser as permitted in this Act.

"(r) Limited Adviser.—The term 'limited adviser' means a company that—

"(1) has been determined by the Board, by order or regulation, to be principally engaged in investing and providing investment advice;

"(2) acts an adviser to one or more qualified investors in connection with any investment by such qualified investor or investors in a bank or bank holding company;

"(3) does not, directly or indirectly, own or control for its own account 10 percent or more of any class of voting shares of the bank or bank holding company and does not, directly or indirectly, have power to vote, in any capacity, 25 percent or more of the voting shares of the bank or bank holding company;

"(4) does not have a direct or indirect economic interest in the bank or bank holding company equal to 25 percent or more of the profits of the bank or bank holding company or of the profits due to one or more qualified investors in connection with an investment in the bank or bank holding company;

"(5) does not have any director, officer, partner or employee in common with the bank or bank holding company and does not have any representative serving in any such capacity at the bank or bank holding company;

"(6) does not advise the bank or bank holding company regarding any management or policy decision, whether on behalf of a qualified investor or otherwise; and

"(7) does not have any significant business relationship with the bank or bank holding company, and no other company that is an affiliate of the adviser has any significant business relationship with the bank or bank holding company.".

(b) EXCEPTION FOR INVESTMENTS BY QUALIFIED INVESTORS.—Paragraph (5) of section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)) is amended by adding at the end the following new subparagraph—

"(G) QUALIFIED INVESTORS.—

"(i) Except as provided in clause (ii), no qualified investor is a bank holding company solely by virtue of its ownership or control of voting shares of a bank or bank holding company if the qualified investor—

"(I) directly or indirectly, owns, controls or has power to vote less than 25 percent of the shares of any class of voting securities of the bank or bank holding company, and less than 25 percent of the total equity of the bank or bank holding company;

"(II) is and remains at all times a passive investor in the bank or bank holding company, and does not participate in the management or operations of the bank or bank holding company, except that a qualified investor that is permitted under subclause (IV) to have director representation at a bank or bank holding company shall not be in violation of this subclause by virtue of having a representative serve as a director of the bank or bank holding company;

"(III) does not have any significant business relationship with the bank or bank holding company, and no other company that is an affiliate of the qualified investor has any significant business relationship with the bank or bank holding company; and

"(IV) does not have any director, officer, partner or employee in common with the bank or bank holding company and does not have any representative serving in any such capacity at the bank or bank holding company, except that a qualified investor that owns or controls less than 15 percent of the voting shares of a bank or bank holding company may have no more than one representative serving as a director of the bank or bank holding company.

"(ii) Notwithstanding clause (i), a qualified investor is a bank holding company if the Board determines, after notice and opportunity for hearing, that the qualified investor exercises a controlling influence over the management or policies of a bank or bank holding company.

"(H) LIMITED ADVISERS.—

"(i) Except as provided in clause (ii), no company is a bank holding company solely by virtue of its role as adviser to one or more qualified investors in connection with the acquisition of shares of a bank or bank holding company if—

"(I) the company is and remains a limited adviser with respect to the investment;

"(II) the qualified investors advised by the adviser, and the limited adviser, do not, directly or indirectly, own, control, or have power to vote, in the aggregate, 25 percent or more of any class of voting shares of the same bank or bank holding company of 25 percent or more of the total equity of such bank or bank holding company; and

"(III) in the case of a limited adviser that advises any number of qualified investors that, including the limited adviser, seek to own, control, or have power to vote, in the aggregate, 25 percent or more of any class of voting shares of the same bank or bank holding company or 25 percent or more of the total equity of such bank or bank holding company—

"(aa) each qualified investor advised by the adviser retains the right to vote and dispose of the shares the investor acquires in the bank or bank holding company;

"(bb) the limited adviser does not communicate in any way with the management or other shareholders of the bank or bank holding company regarding the management or policies of the bank or bank holding company;

"(cc) following the acquisition of shares by the qualified investors, the limited adviser does not provide any advice to, or communicate in any manner with, the qualified investors, or any person that holds an interest in any of the qualified investors, regarding any matter related to the shares or the management or policies of the bank or bank holding company; and "(dd) following the acquisition of shares by the qualified investors, the limited adviser does not, directly or indirectly, own, control or have power to vote 5 percent or more of any class of voting securities of the bank, bank holding company or any qualified investor in the bank or bank holding company.

"(ii) Notwithstanding clause (i), a limited adviser is a bank holding company if the Board determines, after notice and opportunity for hearing, that the limited adviser, or any investor advised by the adviser, exercises a controlling influence over the management or policies of a bank or bank holding company.".

SEC. 1131. LIMITING LIABILITY FOR FOREIGN DEPOSITS.

(a) AMENDMENT TO THE FEDERAL RESERVE ACT.—Section 25 of the Federal Reserve Act (12 U.S.C. 601) is amended by adding at the end the following:

"11. Limitations on liability.

"A member bank shall not be required to repay any deposit made at a foreign branch of the bank if the branch cannot repay the deposit due to—

"(i) an act of war, insurrection, or civil strife, or

"(ii) an action by a foreign government or instrumentality (whether de jure or de facto) in the country in which the branch is located,

unless the member bank has expressly agreed in writing to repay the deposit under those circumstances. The Board is authorized to prescribe such regulations as it deems necessary to implement this paragraph.".

(b) AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT.—

(1) SOVEREIGN RISK.—Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following:

"(t) SOVEREIGN RISK.—Section 25(11) of the Federal Reserve Act shall apply to every nonmember insured bank in the same manner and to the same extent as if the nonmember insured bank were a member bank.".

(2) CONFORMING AMENDMENT.—Subparagraph (A) of section 3(*l*)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1813(*l*)(5)) is amended to read as follows:

"(A) any obligation of a depository institution which is carried on the books and records of an office of such bank or savings association located outside of any State unless—

"(i) such obligation would be a deposit if it were carried on the books and records of the depository institution, and payable at, an office located in any State; and

"(ii) the contract evidencing the obligation provides by express terms, and not by implication, for payment at an office of the depository institution located in any State.".

(c) EXISTING CLAIMS NOT AFFECTED.—The amendments made by this section shall not be construed to affect any claim regarding action taken by a foreign government before the date of enactment of this Act.

SEC. 1132. CERTAIN WRONGFULLY WITHDRAWN DEPOSITS TREATED AS INSURED DEPOSITS.

(a) In General.—Section 3(m) of the Federal Deposit Insurance Act (12 U.S.C. 1813(m)) is amended by adding at the end the following:

"(3) Wrongfully withdrawn deposits.—In its capacity as conservator or receiver of a depository institution, the Corporation shall treat as an 'insured deposit' any deposit at the institution at any time prior to the Corporation's appointment as conservator or receiver—

"(A) which was, through the negligence or misconduct of the institution or any of its employees, permitted to be wrongfully or fraudulently withdrawn by a person other than the depositor, without the knowledge or consent of the depositor; and

"(B) for the recovery of which the depositor has diligently sought private relief against the perpetrator of the wrongful withdrawal, and would have received relief from the institution that had permitted the wrongful withdrawal, but due to acquisition of the institution by the Corporation, the institution is unable to satisfy the judgment.".

(b) Effective Date.—The amendment made by subsection (a) shall apply to any wrongful or fraudulent withdrawal of deposits occurring after January 1, 1987.

SEC. 1133. PROVIDING SERVICES TO INSURED DEPOSITORY INSTITUTIONS.

Section 21A of the Home Owners' Loan Act (12 U.S.C. 1441a) is amended by adding at the end the following:

"(q) Continuation of Obligation To Provide Services.—No person obligated to provide services to an insured depository institution at the time the Resolution Trust Corporation is appointed conservator or receiver for the institution, shall fail to provide those services to any person to whom the right to receive those services was transferred by the Resolution Trust Corporation after August 9, 1989, unless the refusal is based on the transferee's failure to comply with any material term or condition of the original obligation. This subsection does not limit any authority of the Resolution Trust Corporation as conservator or receiver under section 11(e) of the Federal Deposit Insurance Act.".

SEC. 1134. STUDY AND REPORT ON REIMBURSING FINANCIAL INSTITUTIONS AND OTHERS FOR PROVIDING FINANCIAL RECORDS.

(a) Study Required.—The Attorney General, in consultation with the Secretary of the Treasury and the Board of Governors of the Federal Reserve System and other appropriate banking regulatory agencies, shall conduct a study of the effect of amending the Right to Financial Privacy Act by allowing reimbursement to financial institutions for assembling or providing financial records on corporations and other entities not currently covered under section 1115(a) of such Act (12 U.S.C. 3415). The study shall also include analysis of the effect of allowing nondepository licensed transmitters of funds to be reimbursed to the same extent as financial institutions under that section.

(b) REPORT.—Before the end of the 180-day period beginning on the date of enactment of this Act, the Attorney General shall submit a report to the Congress on the results of the study conducted pursuant to subsection (a).

SEC. 1135. REMOVING COST LIMITATION ON CONSTRUCTION OF FEDERAL RESERVE BANK BUILDINGS.

The ninth paragraph of section 10 of the Federal Reserve Act (12 U.S.C. 522) is amended to read as follows:

"No Federal Reserve bank shall have the authority hereafter to enter into any contract or contracts for the erection of any building of any kind or character, or to authorize the erection of any building without the prior approval of the Board of Governors.".

SEC. 1136. $1 COINS.

(a) COLOR AND CONTENT.—Section 5112(b) of title 31, United States Code, is amended—

(1) in the first sentence by striking "dollar,"; and

(2) by inserting after the fourth sentence, the following: "The $1 coins authorized under subsection (a)(1) shall be golden in color, shall have an unreeded edge, shall have tactile features on the surface that aid the visually handicapped to differentiate the $1 coin from other circulating coins, and shall be minted and fabricated in the United States. The $1 coin should have similar metallic anticounterfeiting properties as existing United States clad coinage.".

(b) CHRISTOPHER COLUMBUS $1 COIN.—Section 5112(d)(1) of title 31, United States Code, is amended by striking the sixth sentence and inserting the following: "The obverse side of the $1 coin shall have a design symbolizing the 500th anniversary of the discovery of the New World by Christopher Columbus.".

(c) CIRCULATION DATE.—Not later than 18 months after the date of enactment of this Act, the Secretary of the Treasury shall place into circulation $1 coins authorized by section 5112(a)(1) of title 31, United States Code, in accordance with the amendments made by subsections (a) and (b).

(d) SEIGNIORAGE.—Seigniorage from production of $1 coins referred to in subsection (a) shall be used to offset the reverse seigniorage resulting from the destruction of Susan B. Anthony $1 coins in Government storage. Additional seigniorage from production of $1 coins referred to in subsection (a) shall be used to retire the national debt.

SEC. 1137. PURCHASED MORTGAGE SERVICING RIGHTS.

(a) IN GENERAL.—Notwithstanding section 5(t)(4) of the Home Owners' Loan Act, each appropriate Federal banking agency shall determine, with respect to insured depository institutions for which it is the appropriate Federal regulator, the amount of readily marketable purchased mortgage servicing rights that may be included in calculating such institution's tangible capital, risk-based capital, or leverage limit, if—

(1) such servicing rights are valued at not more than 90 percent of their fair market value; and

(2) the fair market value of such servicing rights is determined not less often than quarterly.

(b) DEFINITION.—For purposes of this section, the terms "appropriate Federal banking agency" and "insured depository institution" have the same meanings as in section 3 of the Federal Deposit Insurance Act.

Amend the title so as to read: "A bill to reform Federal deposit insurance, protect the deposit insurance funds, recapitalize the Bank Insurance Fund, improve supervision and regulation of insured depository institutions, and for other purposes.".

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